The Solicitors' Journal

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CURRENT TOPICS

The Hire-Purchase and Credit Sale Agreements (Control) Order, 1955

THE Chancellor's prescription for the attack of inflation that we suffer or are about to suffer seems, at least as far as the hire-purchase boom is concerned, to be "the mixture as before." The new order restricting hire-purchase and credit-sale transactions (the Hire-Purchase and Credit Sale Agreements (Control) Order, 1955, S.I. No. 297), which came into operation on 25th February, the day after it was made, was a necessarily well-kept secret before it was made, but its terms were very reminiscent of S.I. 1952 No. 121. The order is again made under the Defence (General) Regulations, 1939, and again it covers a wide range of articles, including, as is proper, the television and radio sets, the washing machines, bicycles and motor vehicles that embellish our modern existence. The inclusion of all except non-domestic furniture caused mild surprise, but the requirements of 15 per cent. deposit and instalments spread over twenty-four months, except in a few cases, if mild compared with the 33⅓ per cent. and twelve to eighteen months in the earlier order, are according to the prescribed pattern. Fortunately, the majority of traders already conform to this pattern, and it is not easy to see what effect the attempted restriction of the activities of a small proportion of marginal traders can have on an inflationary tendency. Even the limitation on further capital for the finance companies cannot produce a serious effect, when the only governing factor in the volume of trade is the number of purchasers who can put down the initial deposit. The more drastic medicine of an increase in the bank rate will make it quite impossible to judge whether the hire-purchase restrictions have had any healthy effect, quite apart from the fact that the almost complete absence of any statistics relating to the volume of hire-purchase trade is a gap in our means of checking such matters. The Board of Trade should make it their business to include hire-purchase statistics among their retail trade returns. In the meantime, if the new order brings in clients asking to be told what it means, or to have fresh contracts drawn, we shall have recent experience to guide us.

Signing the Contract

THE application of the pressure of the sellers' market to intending purchasers of real property leads to "an undesirable practice," one gathers from a letter by "Solicitor" to the *Estates Gazette* of 19th February. "It seems," he wrote, "that some property owners and estate agents are encouraging the preparation of two draft contracts where there are, say, two applicants for the purchase of the same property. The vendor's solicitor receives instructions to forward a draft contract to each of the solicitors acting for the two proposed purchasers. The proposed purchasers are informed that whoever signs the contract first secures the property. This has happened particularly where two or more sub-agents have been employed." The reasons for the undesirability of the practice, he concluded, were: (*a*) the unsuccessful purchaser is put to needless expense and anxiety;

CONTENTS

(*b*) purchasers are tempted not to take the usual precautions, such as obtaining surveys and making the usual searches and inquiries; and (*c*) the breach of the usual practice that where an applicant has paid the usual 10 per cent. deposit no other applicant will be dealt with. As to (*a*), the writer says nothing as to the trouble and expense to which a vendor is put by a purchaser who is dilatory, for example, as often happens, because he finds it hard to find a building society or anyone else to advance him sufficient to enable him to complete. In such cases a "preliminary deposit" or no deposit at all may have been paid, and the practice of selling to the first person who signs the contract does separate those who can pay from those who cannot. Point (*b*) is difficult to follow, because if there has been no satisfactory survey the vendor will surely not object to taking a contract "subject to survey." It is a common, if not usual, practice to take 10 per cent. deposit on signing the contract, and only to take a small preliminary deposit before then. Point (*c*) would appear to be based on a false premise. If purchasers will play fair, and never make offers until they are sure that they will be in a financial position to complete when the time comes, vendors will be only too glad to be relieved from the bother of having to deal with two purchasers because they cannot trust either.

Law at British and Other Universities

NOT often does the public in this country have occasion to acquaint itself in detail with the work of the United Nations Educational, Scientific and Cultural Organisation. On the Clapham omnibus this post-war upshot is no doubt regarded, if at all, as but an expensive hobby of the confabulators, expensive for the rest of us, that is. In point of fact, it is in the spheres of activity with which UNESCO's title shows it to be concerned that the admirable practice of international consultation and co-operation offers most promise of useful effect. We cannot be expected to agree for ever with any particular ally on matters of foreign policy, but we ought to be interested in his researches into the art of living. It is perhaps especially worth the lawyer's while to keep an eye on the publications from time to time issued by UNESCO from its Paris headquarters, for law is a well-tried meeting ground of friends from different nations. An English version of one such publication is now on sale at H.M. Stationery Office for six shillings. It is a report, prepared for the International Committee of Comparative Law by Professor CHARLES EISENMANN, of a survey initiated by the General Conference of UNESCO, and its subject matter is the University Teaching of Law. Reports are also published on the teaching of other social sciences. That on law covers some hundred and thirty pages of data and comment. We note with interest that, while the survey extends over eight countries, it was in Cambridge that law teachers from many lands assembled in 1952 and first discussed the whole subject. Another distinction enjoyed by this country is the inclusion in the book, as being on a level equivalent to university, of some account of the teaching given to intending members of the legal profession by the Council of Legal Education and The Law Society.

U.N. Congress on Crime Prevention

THE General Assembly of the United Nations provided, in Resolution 415 (v) of 1st December, 1950, for the convening every five years by the United Nations of a World Congress on the prevention of crime and the treatment of offenders. The United Nations have now announced the convening of the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held in the Palais des Nations, Geneva, from 22nd August to 3rd September, 1955. Her Majesty's Government will be officially represented at the Congress. The working languages of the Congress will be English, French and Spanish. The Congress will comprise three categories of participants, namely: (1) Members officially appointed by their governments, who will be experts in the field of the prevention of crime and the treatment of offenders, possessing a special knowledge of, or experience in, the subjects of the agenda. (2) Observers of specialised agencies and of non-governmental organisations having working relationships with the United Nations. (3) Individual observers. Individuals with a direct interest in the subjects of the Congress (e.g., government, court, police and institution officials, justices, educationists, social scientists, etc.) who wish to attend at their own expense should apply to the Director, Division of Social Welfare, United Nations, New York, U.S.A., stating profession, relevant organisations of which they are members, some indication of the items on the agenda they will be most likely to follow, and the working language with which they are most familiar. The agenda of the Congress will include: (1) standard minimum rules for the treatment of prisoners; (2) selection and training of personnel; (3) open institutions; (4) prison labour; and (5) juvenile delinquency.

His Honour G. B. McClure

On 22nd February His Honour G. B. MCCLURE, who retired in 1953 owing to ill-health from his post as Judge of the Mayor's and City of London Court, died at the age of 67. Educated at Kelvinside Academy and Trinity College Oxford, he served in the 1914–18 war, was called to the Bar in 1917 and commenced working in Sir Archibald Bodkin's chambers. In 1928 he was appointed junior counsel to the Treasury at the Central Criminal Court, and he rose to be Senior Treasury Counsel in 1937. In 1933 he was made Recorder of Rochester and in 1939 he became Recorder of Guildford. In 1940 he was appointed chairman of Hertford Quarter Sessions. He became a Bencher of Inner Temple in 1938. He was a popular and highly capable judge and his death is a great loss to London practitioners.

"Perjury Unlimited"

PROFESSOR ANDREW DEWAR GIBB, Q.C., has written a monograph on Nuremberg entitled "Perjury Unlimited" (Wm. Green and Son, Ltd., Edinburgh, 3s. 6d.), in which he reproduces his impressions as a lawyer in reading through the twenty-two volumes (some 2,500,000 words) of the reports of the Nuremberg Trials. The record, as he says, must hold any lawyer fascinated. For the ordinary man who values human decency and dignity, it holds a strong element of horror as well as fascination. Apart from the horror, of which this generation has supped its fill, this monograph contains some interesting reflections on the nature of the unique international tribunal which tried the cases. "Throughout the trial," Professor Gibb observes, "counsel never seemed to be *ad idem* as to the proper spheres of oral and affidavit evidence respectively." Many pages are occupied by wranglings as to the nature of the evidence to be given. The proceedings went on simultaneously in four languages and Professor Gibb notes several curious examples of American English, as in the word "recess" (for a short adjournment), "witness stand" (for witness box) and "reading into the record" (Professor Gibb expressly does not venture to explain this). Lawyers and other students of the labyrinths of the human mind need guide books to vast records like those of the Nuremberg Trials, and this is a very good guide book indeed.

PROCEDURAL REFORM IN 1955
II—THE "NEW APPROACH" IN PRACTICE

As rules multiply the force of the Evershed Committee's complaint about the profusion and prolixity of the procedural code is more keenly felt. Until the complete redrafting of the R.S.C. as a whole which the committee urged in its 1951 report is accomplished, one of the inconveniences that we who flounder amid the pages of the White Book must continue to suffer is that of the auxiliary numbering of orders and rules. A new catch-phrase will be on many tongues as 20th April approaches this year—Order 14B. It is the number of the order dealing with the "new approach" in practical form, descriptively entitled "Trial without Pleadings." This is a major experiment.

In devising it and recommending its introduction the committee started from the premise that some positive fillip was needed to encourage the profession to become costs-conscious and, which is largely the same thing, allergic to delay. Exhortations to make fuller use of existing short cuts were not enough. The committee was impressed by the efficiency of the procedure by Chancery originating summons which, it pointed out, need not necessarily be restricted to cases where no dispute of fact arose. This form of proceeding was cheaper than a writ action, even a Chancery one, and one of its main attractions was the control over the course of the matter which, under it, the court was able to exercise from an early stage. Originating summonses should, the committee recommended, be made available in a much wider variety of cases than at present. This may be called its primary suggestion on the practical side of the new approach. As a complementary measure, considered to be advisable because the originating summons is so characteristically a child of the equity court, the committee recommended the introduction of a new kind of proceeding by writ "analogous" to the originating summons in its desirable features, but conforming to the formal pattern of Queen's Bench practice. The rules which come into force next term (S.I. 1954 No. 1727) implement substantially this secondary suggestion. So far acceptance of the primary cure has not been manifested.

The object of Trial without Pleadings is clearly to eliminate all needless steps between appearance and trial, while at the same time confining the trial itself to those matters which are actually in issue between the parties. Uninformative pleadings delivered out of court according to an elastic time-table constitute a well-tried method of securing the greatest measure of fairness between parties who are at daggers drawn and each suspicious of the *bona fides* of the other. There are innumerable legal disputes where their use is unnecessarily expensive and dilatory. Already one form of Queen's Bench procedure exists which brings the real issues (disclosed on oath) and the parties' contentions quickly under the surveillance of a master—a specially indorsed writ followed by appearance and an Ord. 14 summons. But Ord. 14 is applicable only where the plaintiff can swear his belief in the absence of a defence. It is not proper to employ it otherwise. Nevertheless, it is possible to adapt it for disputed cases, and that in substance is what the new rules do. Orders 14 and 14B are therefore mutually exclusive in intention, though, as will be shown, in certain events the results aimed at by Ord. 14 may be achieved under Ord. 14B.

The decision whether to adopt the new scheme must be taken by a plaintiff at the time he starts the action, for it is a condition precedent that the writ should not only be specially indorsed but also that, in lieu of the usual notice informing the defendant that if he appears he must also deliver a defence, there shall be included in the writ a notice that if an appearance is entered the plaintiff intends to apply under Ord. 14B. It is still, of course, possible to obtain judgment in default of appearance. But if, having been served with a writ incorporating this notice, the defendant enters appearance, the plaintiff must within seven days apply, by a summons returnable in not less than twenty-one days, for an order that the action shall be tried without further pleadings. He must support his summons by an affidavit summarising the issues, and indicating, so far as necessary, his grounds for contending that the case is suitable for trial in this way. The summons and affidavit are served on the defendant, to whom the rules give an opportunity within fourteen days to file and serve an affidavit in reply. This affidavit must state the nature and extent of the defence and any counter-claim and also any reasons the defendant may have for submitting that the case should not be tried without further pleadings. The plaintiff may, if he so desires, file a further affidavit in reply.

The hearing of the summons presents the master with several alternative courses. It is in essence a summons asking for directions of a particular kind, for trial without pleadings, but it may in practice well go off at a tangent. To begin with the defendant may not have filed his answering affidavit within the time limited; in that case the master *may* on the summons give the plaintiff leave to enter judgment, or he may make such other order as he thinks just. If the plaintiff gets judgment he will be in the same position as if, knowing that there was no defence, he had proceeded under Ord. 14. Or the plaintiff (on whom the onus rests in this respect) may not satisfy the master that the action is a proper one for trial without pleadings; in which event one of the courses open to the master is to give such directions as may be appropriate, the rule being worded in terms similar to those of Ord. 14, r. 8, providing for directions where leave to defend is given. But a master not convinced of the fitness of the case for the new procedure need not give directions: he may dismiss the summons and leave the action to proceed in the ordinary way, the defendant's time for defence running from the date of dismissal. Again, suppose that a plaintiff who has given the appropriate notice fails to take out his summons within the permitted time. The defendant may then apply to dismiss for want of prosecution.

Thus are the casualties of the procedure provided for. If, however, the plaintiff and the defendant both comply with the rules and the master is satisfied as to the propriety of trial without pleadings in the particular case, he must then order that the affidavits shall stand as pleadings and give such other directions as may be appropriate.

The committee ascribed a good deal of importance to defining the classes of case which should be eligible for the new method. The eventual rules effectively duck this question. True they exclude, as the committee proposed, actions of the personal injuries type, which includes road accident cases generally and Fatal Accidents Act and Carriage by Air Act claims. And since special indorsement is a prerequisite, the special categories of defamation, malicious prosecution, false imprisonment, seduction, breach of promise and actions based on fraud are outside the scheme. On the other hand, the scope of Ord. 3, r. 6, is enlarged by the same rules to allow special indorsement in any action *in the Chancery*

Division as well as the Queen's Bench Division apart from these special categories; and not only to allow but also to encourage by means of a costs sanction this fusion of writ and statement of claim in all permitted actions in either division save those of the personal injuries class. So the new procedure need not be shunned of the Chancery men.

Within these broadened limits the burden of deciding whether the action is suitable for the new facilities will be in the first place on the plaintiff's adviser. He will bear in mind the advantages of other well-tried short cuts, not forgetting preliminary issues (Ord. 25, r. 2), special case (Ord. 34), and, if applicable, Ord. 14 itself. As we have indicated, a wrong choice between Ord. 14 and Ord. 14B will not generally do much harm. The committee thought certain kinds of dispute especially suitable for trial without pleadings—actions where the sole or principal question is one of law or construction, and App. V to its Final Report suggested specimen forms to cover a claim for damages for breach of covenant contained in a lease, the plaintiff asserting failure to repair and consequent damage and the defendant admitting his failure but denying damage on the legal ground that the liability for repair had been passed on by the plaintiff to new lessees. This is an instructive example, but its usefulness as an analogy clearly resides not in any conclusion that might superficially be drawn from the type of relief sought but in the fact (as would no doubt have emerged before action from correspondence between the parties) that only a point of law or construction divided the contestants.

While, therefore, it begs the question to say, as one of the committee's sub-paragraphs did, that the new form of proceeding should be available in any action which can properly be tried on the affidavits as filed without further pleadings, it is thought that a plaintiff's solicitor (with counsel's advice if necessary) should be able to apply this test if he informs himself as thoroughly as he can of the expressed views and likely contentions of the disputants, and applies his attention to an appreciation of the nature and extent of the divergence between the respective views. His decision will be affected inevitably, too, by the presence or absence of an atmosphere of mutual confidence between the prospective parties, in the sense that a friendly action or test case will probably recommend itself immediately as a suitable subject for the experiment. Control by the court is, however, at least an impartial form of tyranny, and there seems to be no intrinsic reason why the system of trial without pleadings should not also work where the parties are at arms' length. It is only the nature of their cases that they must swear to at the interlocutory stage: the supporting evidence remains, so far as disputed points are concerned, behind the screen until the trial.

J. F. J.

A Conveyancer's Diary

THE MATRIMONIAL HOME AND THE DESERTED WIFE

FROM the conveyancer's point of view there is some ground for saying that the rights of a deserted wife in relation to the matrimonial home have recently appeared to increase, are still increasing, and ought to be diminished. The difficulty about these rights is their amorphous nature. In *Errington* v. *Errington* [1952] 1 K.B. 290, Denning, L.J., said of a wife deserted by her husband and left by him in the matrimonial home that she is neither a tenant nor a licensee, but is "in a special position—a licensee with a special right—under which the husband cannot turn her out except by an order of the court" (that is, an order under s. 17 of the Married Women's Property Act, 1882). This statement was adopted by Romer, L.J., in *Bendall* v. *McWhirter* [1952] 2 Q.B. 466, in a judgment in which Somervell, L.J., concurred, when he said: "[The wife] has no legal or equitable interest in the home which she continues to occupy and in that respect is in no better position than any other licensee. On the other hand, her husband, the licensor, cannot bring proceedings against her in ejectment, for the status of matrimony prevents it." The learned lord justice then proceeded to consider the question which actually arose in that case, which was whether the special protection which a wife enjoys against ejectment at the instance of her husband avails her against similar action by the husband's trustee in bankruptcy. This question the court answered in the affirmative, on the simple ground, in the judgment of Romer and Somervell, L.JJ., that the property of a bankrupt passes to the trustee in the same plight and condition in which it was in the bankrupt's hands and is subject to all the equities and liabilities which affected it in the bankrupt's hands.

In the earlier case of *Thompson* v. *Earthy* [1951] 2 K.B. 596, it had been held by Roxburgh, J. (sitting on that occasion as an additional judge of the King's Bench Division), that a deserted wife left in the matrimonial home who remains on in occupation thereof does not acquire any legal or equitable interest in the premises so as to bind them in the hands of a purchaser. So far, then, from the conveyancer's point of view, so good: no special inquiry is necessary to protect a purchaser for value against the possibility, which may be disastrous, of being unable to obtain vacant possession of the premises because they are subject to some overriding right of occupation amounting neither to a legal nor an equitable interest, and one which in the normal case is probably not registrable as a land charge. Since that case there have been others, of which *Ferris* v. *Weaven* [1952] 2 All E.R. 233 may be taken as an example, where the purchaser from a deserting husband was, indeed, made to submit to the right of occupation of the deserted wife, but these cases have generally been regarded as somewhat special and the decisions influenced by the flavour of collusion which permeated them (see, for example, the remarks of Harman, J., concerning *Ferris* v. *Weaven* in *Barclays Bank, Ltd.* v. *Bird* [1954] Ch. 274).

Now, if one is prepared to accept the headnote to the report of *Jess B. Woodcock & Sons, Ltd.* v. *Hobbs* in the Weekly Law Reports ([1955] 1 W.L.R. 152), everything is in the melting pot again. The note first reports the facts, which were complicated and are of no great importance, since both the county court judge and the Court of Appeal treated the case simply as an action of ejectment by a purchaser for value against the wife of his vendor, the vendor having deserted the wife and left her in occupation of the premises. On these facts, the conclusion is stated to have been "that a deserted wife has no right to stay indefinitely in the marital home, but only a right to stay until such time as the court in its discretion orders her to go out; and that the court's discretion could be exercised in an action for possession and not only in a separate application made expressly for the purpose. Accordingly, having regard to

the circumstances of the present case, the court in the exercise of its discretion ordered the wife to vacate in three months."

The court consisted of Denning, Birkett and Parker, L.JJ., and it is necessary to consider the judgments of the court in some little detail. Denning, L.J., referred first to the leading principle in all these cases, the disability of a husband to obtain possession of the matrimonial home against the wife except under the special provisions of the Married Women's Property Act, 1882, and to the application of this principle to the position of one kind of successor of the husband, a trustee in bankruptcy, in *Bendall* v. *McWhirter*. He then posed the question: What is to happen when the husband sells the house over the wife's head to a third party; can the purchaser turn the wife out? On this question Denning, L.J., referred to *Ferris* v. *Weaven* and other cases where the purchaser purchased with full knowledge of the wife's occupation and which, it had been suggested in argument, were cases of collusion; but, in his judgment, the true explanation of the three cases was that the purchasers took with full knowledge of the facts. In the case before the court, the purchasers did not have knowledge (in the sense, it would seem, of actual knowledge) of the fact of the defendant's occupation in her capacity as a deserted wife, but in the judgment of Denning, L.J., as they made no inquiries and there were circumstances which ought to have put them on inquiry, the case had to be approached on the footing that the purchasers took with notice. (No mention was made here of s. 199 (1) (ii) of the Law of Property Act, 1925, but the learned lord justice must have had this provision in mind when he came to this conclusion: it is there provided, *inter alia*, that a purchaser shall not be prejudicially affected by notice of any matter unless it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him.) And on that footing, in his view, the plaintiffs were not entitled to possession as a matter of right; the court had a discretion whether or not to give possession, and to give it on terms.

On the way in which this discretion should be exercised, Denning, L.J., said that, if a husband conveyed the house to a mistress or a friend at a low price simply in order to defeat the wife's rights, the court would no doubt refuse to order the wife to go, "but in the case where the husband sells the house to a purchaser who buys in good faith at a fair value, not knowing the wife's right (but subject to it only because he is taken by law to have notice of it), the court would, I think, be disposed to order her to go, but it would do what it could to lessen the hardship to her." In the present case, the wife, as has been seen, was given three months to quit.

Up to this point, this judgment appears to be a decision on the claim in dispute. In some ways it is a somewhat odd decision. First, if it is right, it is in direct conflict with *Thompson* v. *Earthy* (and whatever may be said of that case, it is a clear decision the other way), yet no mention was made by Denning, L.J., or by the other members of the court of that decision. Secondly, if the court has such a discretion to postpone the rights of a purchaser with knowledge or notice, simply on the grounds of knowledge or notice, to those of the wife in occupation, it would be of some interest to know its source. Is it statutory, i.e., is it in s. 17 of the 1882 Act? But that section provides for the solution of questions "between husband and wife as to the title to or possession of property," and the purchasers here were neither husband nor wife; and if *Bendall* v. *McWhirter* is suggested as a sort of bridge over which s. 17 can be transported and used in a case such as this, the extremely narrow ground of that decision, as Somervell and Romer, L.JJ., treated it, must not be overlooked.

But there are sound reasons for the view that the observations of Denning, L.J., which I have attempted to summarise were, in fact, made *obiter*, for towards the end of his judgment he said this: "[Counsel] argued that the plaintiffs were entitled at law to possession on the ground that the wife had no equity or, alternatively, the plaintiffs had no notice of it. If we had held in his favour on either of these points, the order would have been for possession in four weeks. But when we told him that we were in his favour on the question of discretion, he did not seek further to argue those points, and we told him that he could argue them again on another occasion if he so wished."

Birkett, L.J., came to the same conclusion, but his judgment is concerned mostly with procedural matters. On the main question, whether the court had a discretion to exercise, he merely assented to the existence of such a discretion in the case before the court, but whether he did so on the general grounds advanced by Denning, L.J., or on the concession made by the plaintiffs' counsel on their behalf, is not quite clear. There is no such doubt about the views of Parker, L.J., whose approach to the case was very cautious. He said that at one time it had looked as if the court would have to decide, "there being no decision of this court as yet on the matter," whether the protection afforded to a deserted wife in *Bendall* v. *McWhirter* could be extended to a case where the property in which the wife continued to reside had been purchased by a purchaser for value with constructive notice of the wife's possession; and he then went on to say: "Speaking for myself, I should on that matter have required considerable further argument, since, as at present advised, I see great difficulty in extending the wife's protection so as to give her any rights against a *bona fide* purchaser, whether with or without notice." Then, after referring to the *Ferris* v. *Weaven* cases as decisions doubtless justified on their own facts, the learned lord justice observed that counsel for the plaintiffs had taken up the attitude that, provided the court could, as a matter of discretion, give the plaintiffs possession, albeit not immediate possession, he was content. On that footing, Parker, L.J., agreed with the proposed order, that possession be given in three months.

The decision in this case was not, therefore, founded on any agreed conclusion on the question whether, as a matter of general application, the principle of *Bendall* v. *McWhirter*, in which the husband's successor, being a trustee in bankruptcy, took the husband's property subject to all the liabilities to which it had been subject in the husband's hands, extends to the case where the successor is a *bona fide* purchaser for value, whether with or without notice of the deserted wife's occupation. That question has still to be decided by the Court of Appeal. The only direct decision on it is *Thompson* v. *Earthy*. The view that Roxburgh, J., took in that case is supported by the remarks of Romer, L.J., in *Bendall* v. *McWhirter* which I have quoted, by similar observations made by Jenkins, L.J., in *Bradley-Hole* v. *Cusen* [1953] 1 Q.B. 300, and now by the doubts expressed by Parker, L.J., in the case under examination. This is a formidable body of opinion. There are, of course, plenty of indications of a contrary view in various judicial pronouncements, and the debate on this question will doubtless continue until the point is finally settled either in the Court of Appeal or in the House of Lords. Meanwhile, I suggest that the present case (and particularly the misleading headnote to the report of it in the Weekly Law Reports) be treated with caution. "A B C"

Landlord and Tenant Notebook

DECONTROL BY INCREASE IN RATEABLE VALUE

THE point in *Davies* v. *Gilbert* [1955] 1 W.L.R. 160 (C.A.); *ante*, p. 130, was a short one: whether the tenant of a cottage and some land, protected by the Increase of Rent, etc., Restrictions Act, 1920, could claim the protection of the Rent, etc., Restrictions Act, 1939, when the premises lost that of the former.

The tenancy had commenced in 1937, the cottage then being rated at £4 a year and the land, 4½ acres of woodland, not being rated at all. The rent was 7s. 6d. a week. If the decontrol provisions of the Rent, etc., Restrictions Act, 1923, had then been in full force, the property would have escaped control until the Act of 1939 was passed; but the Rent, etc., Restrictions (Amendment) Act, 1933, had excluded from those provisions houses outside London, the 1st April, 1931, rateable value of which did not exceed £13. It appears to have been assumed or inferred in the proceedings that, while the fact that land was not rated did not necessarily mean that it had no rateable value, the state of the premises in 1937, 1938 and 1939 was such that any such value would have been less than £1.

This being so, the exclusion provided for by s. 12 (2) (iii) of the 1920 Act ("For the purposes of this Act, any land or premises let together with a house shall, if the rateable value of the land or premises let separately would be less than one-quarter of the rateable value of the house, be treated as part of the house, but, subject to this provision, this Act shall not apply to a house let together with land other than the site of the house") did not apply. But, since then, three things had happened.

First, the defendant cleared the undergrowth from the 4½ acres and started business as a "caravan site proprietor." This was in 1938; in 1939 came the Second World War and the Act of 1939, which introduced a new approach and criterion by reference to which houses with land were to be excluded from protection: "For the purposes of the Rent and Mortgage Interest Restrictions Acts, 1920–1938, as amended by virtue of this section, any land or premises let together with a dwelling-house shall, unless the land or premises so let consists or consist of agricultural land exceeding two acres in extent, be treated as part of the dwelling-house; but, save as aforesaid, the principal Acts shall not, by virtue of this section, apply to any dwelling-house let together with land other than the site of the dwelling-house." Then, in 1953, the caravan site was rated at £9 a year.

The plaintiff bought the reversion next year and gave the defendant notice to quit. The question was whether the assessment of the caravan site had had the effect of decontrolling the dwelling-house, or whether, either on or apart from such decontrol, the defendant was entitled to invoke the 1939 Act criterion and say that, in any event, the land let together with the cottage was not agricultural and must be treated as part of the dwelling-house.

The court accepted the landlord's contentions. Dealing first with the suggestion that on 1st September, 1939, the premises had become subject to "new control," Denning, L.J., decided, perhaps somewhat curtly, that they had not. To appreciate the position, it is necessary to inquire into what is covered by the words "by virtue of this section," which occur twice in the course of s. 3 (3) of the 1939 Act. It will be found that subs. (1) extends protection "without prejudice to the operation of the two preceding sections" to "every *other* dwelling-house of which the rateable value on the appropriate day did not exceed, etc.," while the former of those two preceding sections enacts that the principal Acts shall continue in force, etc. In the face of which it would be difficult to contend that the cottage which was the subject of *Davies* v. *Gilbert* underwent a change of status on 1st September, 1939.

Denning, L.J. (after dealing with a point based on s. 12 (6), of which more later), next considered the question whether the new rating in 1953 had taken the premises out of old control, and held that it did: the time when the rateable value test was to be determined was, in his judgment, the time when the landlord sought to enforce his rights. The plaintiff was, accordingly, entitled to possession.

The judgment is a somewhat terse one, and Denning, L.J.'s colleagues were content to express their agreement without expounding their views. The question of time was gone into fairly recently in *Bowness* v. *O'Dwyer* [1948] 2 K.B. 219, in very different circumstances; and the case itself illustrated the possibility of exceptions to the rule. A landlord had let rooms with furniture at £1 10s. a week, of which sum 3s. 6d. was attributable to the use of the furniture; next year the local rent tribunal reduced the rent to 8s.; the landlord determined the tenancy, alleging that 3s. 6d. was a substantial portion of the whole rent, so that the principal Acts did not apply; it was held that the figures to be compared were the 3s. 6d. and the £1 10s. of the contract, but agreed that the general principle was that laid down in *Stone (J. & F.) Lighting & Radio, Ltd.* v. *Levitt* [1947] A.C. 209; the status of premises should be determined at the date when the landlord seeks to enforce his rights. In the case concerned, the issue related to whether a letting at less than two-thirds of the rateable value had taken the dwelling-house out of the Acts, and it was held that it did.

Davies v. *Gilbert* does appear to be more closely akin to *Stone (J. & F.) Lighting & Radio, Ltd.* v. *Levitt* than to *Bowness* v. *O'Dwyer*; the question in each was one of status, and, while status is difficult to define in positive terms, it is something which can be brought into being by, but cannot be modified by, contract, but may be modified by other events, In *Bowness* v. *O'Dwyer* the gist of the decision was that one must compare value of use of furniture with rent *reserved* because the essential question is whether the premises were *bona fide* let at a rent which, etc., and then there was the element of value to the tenant; both furniture and tenant might change from time to time, but the emphasis was on the letting.

Another decision which shows what slight circumstances may count is *R.* v. *Sidmouth Rent Tribunal; ex parte Sellek* [1951] 1 K.B. 778, in which it was held that premises outside London rated, after the tenancy had commenced, at £80 a year were outside the scope of the 1939 Act, though they were a flat in a building which had previously been rated at £70 a year. The relevant date for the rateable value criterion, under new control, is *prima facie* the rateable value shown in the valuation list on 1st April, 1939; but (s. 7 (3)) in relation to any dwelling-house first assessed after the appropriate day, the day on which it was first assessed is what matters. It would appear from this that the tenant in *Davies* v. *Gilbert* might have been in a better position if the woodland had not been left out of the valuation list. The appropriate day for old control is 3rd August, 1914 (or,

if there was then no assessment, the first assessment); it may be that after the passing of the Local Government Act, 1929, s. 67, "de-rating" valuation of agricultural land would have been considered a mere waste of time, but even then it seems that an entry could have been made.

What is rather more disappointing is the cavalier way in which an argument based on s. 12 (6) of the 1920 Act was rejected. That subsection, saying that where the Act has become applicable to any dwelling-house, it shall continue to apply thereto whether or not the dwelling-house continues to be one to which the Act has applied, has received little but derisive treatment. Destructive criticism has been couched in forceful language at times; but of two constructive suggestions which have been made, one is that it is designed to prevent an increase in rateable value from taking a house out of the Act: *Haldane* v. *Sinclair* [1927] S.C. 562.

It is interesting to note—since the time factor was so important—that the notice to quit must have expired before 1st October last (the report does not give exact dates); for the premises were found not to be property comprised in a rent control protected tenancy, and were therefore not excluded from Pt. II of the Landlord and Tenant Act, 1954, by s. 43 (1) (*c*). Of less interest to the practitioner as such is that they bore the *prima facie* self-contradictory name of "The Cuckoo's Nest"; but that bird is associated with problems of classification, and with ejectment proceedings.

R. B.

HERE AND THERE

OPENING FOR MARTYRS

EVERY profession and creed and status has its martyrs. The missionary, the soldier, the sailor are obviously dedicated victims of sacrifice to the cruelty of men and of the elements. Love has more subtle ways of martyring its worshippers than hate. Men of science, that most impersonal of all the gods, have laid themselves out for martyrdom on its cold altars, some even using their own bodies to test the ultimate effects of deadly drugs. But, on the whole, men and women do not join the Inns of Court or The Law Society with the thought of martyrdom uppermost in their minds, or even as a remote possibility. Only failing sufficiently alluring prospects in the Temple or Lincoln's Inn will the young advocate normally go forth to preach the true gospel of British justice to the unappreciative anthropophagi. The Admiralty Bar are not called on to weigh anchor and face the devouring cruel sea. Service in the Judge Advocate's department is not quite the most perilous known to Her Majesty's service. No, for the lawyer martyrdom is something in the nature of a by-product rather than a shining inspiration. The law, we are sternly told at the opening of our careers, is a jealous mistress and, like every mistress, she has many incalculable moods; she may kill by neglect and starvation or contrariwise she may kill by over-kindness, smothering her darling with favours till the life (or that which is the essential of life, the liveliness) is crushed right out of him. One or other fate is in store for most lawyers, but not as a matter of deliberate choice. Martyrdom is a thing embraced as well as inflicted. Merely to be accidentally run over by a bus does not make a man a martyr. We justly revere the integrity of our judges, but I cannot at the moment recall any instance of one of them being hanged or shot for his tenacious incorruptibility in the exercise of his judicial office.

Q.E.D.

IT has seemed that hitherto the lower strata of the profession have had even less opportunity for spectacular self-sacrifice, but it may be that they will soon find a means of relief for their only thinly veiled preference for a more glorious crown rather than a mere favourable judgment, if a recent incident in a United States court is anything to go by (and all lovers of the dramatic will sincerely hope that it is). A casual reader of the newspapers might have been misled by the apparent *non sequitur* of the headline: "He Ate Glass to Save Film Star £17,500." But the link was logical enough. The film star was Miss Esther Williams who, not content with the watery perils to which she is so well accustomed, has ventured out of her element among the manifold dry-land dangers of owning a restaurant. The hungry monsters of the deep may be far more readily evaded by the svelte and the streamlined than the hungry monsters at the tables. In our simple way we in England could have warned her of the snail in the ginger-beer bottle order of peril. For her the trouble took the form of a *cache* of splintered glass alleged to have been found in an ice-cream by a customer who thereupon claimed the dollar equivalent of about £17,500. When the case first came on at Los Angeles about a fortnight ago Miss Williams' counsel produced a whisky glass and proceeded to eat it as a practical demonstration of its harmlessness as diet. Then he asked for and obtained an adjournment since, he said, "the jury will be wondering whether I suffer any after-effects." At the resumed hearing he returned to the same line of argument with variations. This time he pounded the glass into splinters with a hammer, spread them on a slice of bread and there and then ate it. The jury, as impressed as good children at a conjuring party, gave a verdict for the defendant. Counsel's own explanatory note delivered after the case was over, "I didn't actually eat the glass; I just swallowed it," in no wise detracts from the splendour of his achievement in a very rare style of advocacy. One would like to credit it with complete originality, but something like it has been done before, and that was in Ireland, where also juries are particularly appreciative of a turn for the sporting and the dramatic. Tim Healy, K.C., was appearing for the defendant in a water pollution case. Suddenly he produced a small bottle of water, a sample, he said, which he had taken from the stream in question. Then, uncorking it, he drained it at a gulp, remarking that it was the first water he had tasted for years. It was Lord Somervell, when he was a boy in his teens, who was told by a distinguished "silk" that it was all right for him to come to the Bar so long as he had a good digestion. ("There's more guts than brains in this profession.") If this style of advocacy catches on, fresh and convincing force will be added to this old aphorism. The occupational risks of the Bar will be increased by the ever-present possibility of martyrdom in one's client's cause. Instructions to counsel will assume a more poignant interest. Casualties will diminish competition and speed professional advancement. The fittest will survive.

SURVIVAL OF THE FITTEST

THIS question of the survival of the fittest links up with a topic which has lately been noted in the Press, that of the oldest practising solicitor. In London, it seems, Major John William Howard Thompson, admitted in 1883 (the year that the force of Hicks Pasha was annihilated by the Dervishes), leads easily at ninety-three. He joined the army in the first World War at the age of fifty-three. He still travels daily to

the vicinity of the Temple from his Surrey home. He is credibly reported to regret that he is cut off from his favourite recreation; his doctor advises him not to go shooting any more. There seems to be no particular reason why he should retire for some years, but at present Mr. John Stallard of Worcester is ahead of him as the oldest practising solicitor in the country. He is ninety-seven and went into partnership in the family firm in 1880 (the year of the start of Gladstone's second Ministry). He travels by rail from his home at Redland Colwall, walking to and from the station at each end of the journey. He has been Mayor of Worcester three times. In Wales, Alderman William George, the brother of the late Earl Lloyd George, must be the oldest solicitor in practice. At ninety he still appears in the local court at Criccieth.

ERRATUM

A SLIP in the processes of proof correction last week made this column refer to a time when beards became associated with "the gracious and outstandingly intellectual." The diabolic thing about printing slips is that they generally turn out to say not merely what one did not mean, but the very opposite of what one meant. The beard in the nineteen-thirties was, of course, generally associated with "the precious and ostentatiously intellectual."

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

"With Growing Reluctance"

Sir,—In your "Current Topics" column for 12th February, you question whether solicitors who still undertake poor prisoners' defences do so "with growing reluctance."

This Association represents practically all the leading solicitors practising in criminal courts in and around London.

All members, with one or two rare exceptions, emphatically agree that work under the present utterly nominal fees existing for defences in criminal courts is indeed undertaken "with growing reluctance," and, in many cases, is not accepted at all because of the present scale. The scale allowed is, in the view of our Association, quite inadequate for the actual attendance in court, even with a 50 per cent. increase (which is frequently only a discretionary one).

When it is appreciated that quite 50 per cent. of legal aid or defence certificates are granted for persons in custody, thus involving one, perhaps two or even three journeys to and attendances at prisons, probably attendances on witnesses and all without any extra charge, one can understand how monstrous it is to expect the liberty of the subject to be properly protected until s. 21 of the Legal Aid and Advice Act is brought into force with "fair and reasonable charges for work done."

Doubtless a valuable work is done for nothing by young members of the profession at poor man's centres, as Mrs. Picciotto told the *Evening Standard*.

Two or three matters must, however, be noted in this connection. Poor man's centres usually function in the evenings. They are only for *advice* given by young members of the profession who have naturally not the experience of their older brethren. They do not involve attendances during the day in court and in the office running concurrently with properly paid private work.

London, W.1. CLAUDE HORNBY,
Chairman and Hon. Secretary,
London (Criminal Courts) Solicitors' Association.

Counsel's Opinion in Duplicate

Sir,—Some time ago a certain amount of correspondence appeared in one of the recognised law journals recommending the adoption throughout the legal profession of the practice of sending completion statements in duplicate. This, of course, is an admirable idea and one which we have, in common with other firms, always adopted.

I wonder whether the idea of sending spare copies could be extended to the frequent occasions when counsel submit written opinions for the consideration of their instructing solicitors, who, in most cases, have in turn to submit a copy to an anxious client. In many cases, these opinions are lengthy and it would surely not cause a great deal of extra trouble to counsel's staff if, when typing the opinion, one or more carbon copies were made. I was speaking to a former member of the German Bar yesterday, who assured me that carbon copies of written opinions were sent as a matter of course before World War II in his country.

London, W.C.2. ARTHUR P. ARNOLD.

Maisonette Leases

Sir,—We are trying to standardise a form of maisonette lease but have run into great difficulty. Having regard to the low ground rent reserved, landlords seem unwilling to give any covenants to maintain the rest of the building of which the demised maisonette forms part, even though such landlord would have remedy over and against the other tenants.

We know that a recent supplement to Butterworth's Encyclopædia gives a form of lease, but the remedy therein suggested (that the tenant should be entitled to withhold the rent, etc.) seems quite inadequate. We have also tried the device of making the tenants responsible merely for internal repairs and to pay a fair share of the expenses of everything else to be kept on foot by the landlord. The landlord is usually a builder who wants to sell the ground rent and a private person will not buy a ground rent with numerous repairs to supervise.

We should greatly appreciate the views of your readers or of yourself on this point.

FRANK STIMPSON & BAINES.

London, S.E.23.

R. B. writes: I agree that the device of a proviso for suspending payment of rent, suggested in Precedent No. 4 of section VIII of the supplement to the Encyclopædia of Forms and Precedents, may well prove inadequate, but regret that I am unable to put forward any practicable improvement. By "practicable" I mean such as a ground landlord would accept; it is unlikely, for instance, that the deposit of a sum would be agreed to. If one sought to overcome the difficulty by cross-covenants between the tenants one would be up against the fact that such covenants call for expenditure of money and are not restrictive (*Haywood* v. *Brunswick Permanent Building Society* (1881), 8 Q.B.D. 403). I cannot, therefore, suggest any adequate conveyancing device; as regards "maintenance" in the narrowest and literal sense, it should be possible to rely on easements.

An Entire Horse

Sir,—"The mirth of artistic Philistines" mentioned by "Escrow" in his article in your issue of 19th February would be nothing compared with their hilarity at his apparent ignorance of the meaning of the word "entire" in its application to horses.

London, W.2. J. R. N. HOLDSWORTH.

"Escrow" writes: Your contributor's ignorance was not only apparent but real. He now—

"... knows two things about the horse
And one of them is rather coarse."

Many thanks to your correspondent for supplying the ungelded truth of this matter.

Mr. H. V. CUSTANCE, town clerk of Chipping Norton, has been appointed town clerk of Honiton.

Mr. WILLIAM STUART THEAKER, solicitor, of Leeds, has been appointed a magistrate for the City of Leeds.

REVIEWS

The Law Society's Digest. Volume 1. Conveyancing Practice and Costs. 1954. London: The Law Society. £1 5s. net.

The Council of The Law Society are responsible for the compilation of this volume which contains epitomes of case law and opinions of the Council of The Law Society on conveyancing practice and costs and on some associated topics. Including the index, but excluding tables, the volume contains 639 pages. No doubt the very wide circulation the volume will undoubtedly enjoy assists in keeping down the price, which is surprisingly low.

The lengthy chapter on conveyancing is most useful and we are sure that a solicitor who is not able to refer to it will often find the opinions contained in it quoted against him. On very many problems of practical importance there is no judicial authority and the opinions of the Council are regarded as authoritative by most solicitors. Thus, it is customary to act in accordance with the views expressed by the Council on such matters as the liability to pay the costs of production of deeds to mortgagees or to sub-purchasers and the decision as to the proper place for completion. It is impossible to do more than illustrate the many points on which the views of the Council have been expressed and recorded so that solicitors may rely on them. On the other hand, not many cases are quoted. For instance, one only (*Re Wright and Thompson's Contract* [1920] 1 Ch. 191) appears under the heading "Abstracts of Title." We doubt if an adequate summary of relevant decisions could be given in the space available, and it is not easy to see why certain ones have been selected for mention and others omitted. Would it not be equally useful to refer to *Re Pelly and Jacob's Contract* (1899), 80 L.T. 45 (right of purchaser taking a "free" conveyance to have an abstract), or *Re Stamford, Spalding and Boston Banking Co. and Knight's Contract* [1900] 1 Ch. 287 (obligation to supply complete abstract)? Similarly, on the question of costs of travelling to examine deeds, should not *Alsop* v. *Lord Oxford* (1833), 1 Myl. & K. 564, and *Hughes* v. *Wynne* (1836), 8 Sim. 85, be mentioned? The classification in this volume of the opinions of the Council is excellent, but we doubt whether a useful purpose is served by the summaries of a few judicial decisions.

The section on Costs is not limited to those concerning conveyancing transactions, although most of the text is occupied by opinions on such transactions. Thus the chapter on Insolvency, etc., refers to costs on voluntary liquidation of a company. There are also a few chapters on topics not obviously within the scope of the description of the volume, for instance, there is one on Probate, Administration and Trusts, and another on Partnership.

This volume is well produced and the cross-references are particularly carefully chosen. With the proposed cumulative supplements, it will be of considerable value for many years. We would suggest, however, that in a future edition the attempt to refer to judicial decisions should be abandoned.

An Outline of Planning Law. Second Edition. By DESMOND HEAP, LL.M., L.M.T.P.I., Comptroller and Solicitor to the Corporation of the City of London. With a Foreword by Sir PATRICK ABERCROMBIE, M.A., D. Lit., F.R.I.B.A., P.P.T.P.I., F.I.L.A. 1955. London: Sweet & Maxwell, Ltd. £1 5s. net.

Town and Country Planning Act, 1954. A Guide for Agents and Others. By CHRISTOPHER BEAUMONT, M.A., of the Middle Temple, Barrister-at-Law. 1955. London: The Incorporated Society of Auctioneers and Landed Property Agents. 2s. 6d. net.

The Town and Country Planning Act, 1954, as affecting Conveyancing Practice. By DESMOND HEAP, LL.M., L.M.T.P.I., Comptroller and Solicitor to the Corporation of the City of London, and P. E. R. ENGLISH, Solicitor. 1955. London: The Law Society. 2s. 6d. net.

A Guide to the Town and Country Planning Act, 1954. By DAVID M. LAURANCE, B.Sc. (Est. Man.) Lond., F.R.I.C.S., F.A.I., of Gray's Inn, Barrister-at-Law, and PHILIP H. WHITE, M.Sc., (Est. Man.) Lond., A.R.I.C.S., A.A.I. 1955. London: The Estates Gazette, Ltd. 17s. 6d. net.

The Town and Country Planning Act, 1947, gave rise to a large amount of legal literature, and the 1954 Act is faithfully following the precedent so set. The four books, or booklets, as two of them are, here reviewed, are in the nature of guides to this complicated branch of the law, and are being followed by larger text-books.

Mr. Heap's Outline differs from the other three, however, for it treats of the whole of planning law and not of the 1954 Act only. The author's reputation in this sphere is sufficient to guarantee a clear and authoritative exposition of the law within the limits which he has set himself. He is faced with the difficulty which confronts everyone trying to write a short outline of intricate statutory provisions of choosing what to put in and what to leave out. In the result, he has succeeded in covering a remarkably wide field, but one wonders whether the allotment of only one page of text out of 195 to a description of the contents of a development plan (there are another two pages devoted to the specialised aspect of designation) really does justice to this important part of planning law; moreover, no reference is made, except in a list of statutory instruments in an appendix, to the important Development Plans Direction, 1954, and the Ministry's circular which was issued with it, so that all told one may be left in some doubt as to the importance of the development plan in the whole system. This is a book of general interest which can be thoroughly commended to anyone who wants to know the general scheme and a large amount of the more important details of planning law.

The booklets published by the Incorporated Society of Auctioneers and Landed Property Agents, and The Law Society, are short and helpful explanations of the new 1954 Act. The Law Society's booklet is, of course, written by solicitors especially for solicitors, and, therefore, is more likely than the other to help the reader; it is a model of concise and accurate exposition.

The Guide, by Messrs. Laurance and White, is a much fuller guide to the new Act; it gives one a true appreciation of the difficult and intricate details of the Act, and devotes special attention to the many varied forms of apportionments required, which it illustrates with diagrams. The authors are the heads of the legal and valuation departments respectively of the College of Estate Management, and so are well qualified for their difficult task. The book does not provide easy reading, though that is the fault of the Act, and lacks an index, but there is an excellent table of contents. For anyone who is prepared to take a little time and trouble to understand the subject it is an excellent, clear and comprehensive guide to the intricate details of the Act.

Rent Control. Second Edition. By DENNIS LLOYD, M.A., LL.B., of the Inner Temple, Barrister-at-Law; and JOHN MONTGOMERIE, B.A., of Lincoln's Inn, Barrister-at-Law. 1955. London: Butterworth & Co. (Publishers), Ltd. £1 17s. 6d. net.

The first edition of this work appeared at the end of 1949, the authors thus being newcomers to the field; but if they did and do not make the claim *totidem verbis*, it can be said that the publication possesses certain features of its own. They are not just the semi-colloquial style, with its occasional use of question marks in sub-titles ("What is rent?") and metaphors ("Machinery for Increasing Rent"), but the inclusion of statements of the common law which, while not closely connected with control, are likely to crop up when one is confronted with some problem arising out of the Acts: e.g., the law relating to notices to quit, forfeiture and waiver thereof, etc. And what makes an especial appeal to many readers will be the chapter devoted to Conveyancing Points, which now includes sections dealing with problems created by the Housing Repairs and Rents Act, 1954, and the Landlord and Tenant Act, 1954. It is, of course, those two measures, or those parts of them which concern rent control, which have occasioned the new edition, and account mainly for the considerable increase in length (617, as against 454, pages).

We would have expected to find some reference to the important *Pickavance* case (in its final form: *Preston and Area Rent Tribunal* v. *Pickavance* [1953] A.C. 562) in the above-mentioned chapter on Conveyancing Points as well as in the chapter on Furnished Premises, as it emphasises the advisability, from a landlord's point of view, of not letting furnished dwellings by periodic tenancies. And the effect of Somervell and Denning,

L.JJ.'s respective observations on the citing of *Estates Gazette* reports, made in *Birtwistle* v. *Tweedale* [1953] 2 All E.R. 1598 (C.A.) (reported as a Practice Note at 98 SOL. J. 61), is a little exaggerated when that incident is mentioned in the Preface and in the chapter on Claims for Possession in the County Court. But this merely provokes the reviewer's observation that the importance attached to Practice Notes and Directions in this book is another praiseworthy feature which makes it worth acquiring even by those accustomed to use publications of longer standing.

TALKING "SHOP"

PLAIN TALES FROM THE SHELVES—V

WHAT were litigants doing a century ago? By and large, very much what they are doing now, but there were fewer disputes about taxation and many more, it seems, about real estate. Will construction cases were abundant; of about 220 cases collected in Vol. 90 of the Revised Reports (1851-3), forty-seven are listed under the generic title "Wills," making about 21 per cent. of the whole, a high proportion. Questions about the separate estates of married women were, of course, endemic. The Rent Acts were still far off, and differences between landlord and tenant seem to have been less frequent than those between vendor and purchaser; the volume of reports just cited supplies only nine cases in the first class against sixteen in the second.

Moving from the general to the particular, Mr. Muddle was in difficulties with the estate of Lucy Sutherland,(1) having imprudently taken a transfer of a mortgage from one Arden, who had lent to one of the executors, Townshend, on the security of Townshend's interest under the will. We will not make any pretence of understanding the case, but we can claim by an empirical method to have foreseen the result, which the Vice-Chancellor states in plain terms and in a manner slightly suggestive of Sir Alan Herbert. "Upon these grounds . . . the estate of the testator has a lien on the interest of Townshend . . . in priority to the defendant Muddle for securing the amount due by Townshend to the estate of the testatrix. The decree will be with costs against Muddle."

Mr. Brien was complaining of negligent driving of Mr. Bennet's omnibus,(2) which he had hailed and attempted to board somewhere between Hammersmith and London [*sic*]. The complaint was the familiar one, of which we have heard something similar of late, that the omnibus moved off too fast for the old gentleman. "The driver, supposing that the plaintiff had got into it, drove on, and the plaintiff fell on his face on the ground and was much hurt." The defendant, by his counsel, could think of nothing better than to submit that "the plaintiff never was a passenger," which in a sense was true but was not very conciliatory. The judgment of Abinger, C.B., is a model of brevity: "I think the stopping of an omnibus implies a consent to take the plaintiff as a passenger, and that it is evidence to go to the jury." Verdict for the plaintiff; damages £5. From the damages we may infer that it was mostly to his dignity that the plaintiff had suffered "much hurt."

About the same time, Mr. Middleton, an heir-at-law, or, to be exact, a disappointed heir, was disputing about costs(3) with the persons beneficially entitled against him under the will. According to the evidence, two days after the funeral of the deceased Mr. Middleton, two friends of the family produced the will, to be read over (was it provocation or custom?) in the presence of the heir-at-law. He thereupon seized the document and tore it into pieces, exclaiming at the same time, "I have removed that barrier" (which he had not), and shortly afterwards, "I have done it—I don't care if I'm hanged for it!" (which he couldn't be, even in those days). After this display of choler, and after putting the others to the trouble of collecting all the scraps and gumming them upon a new sheet and proving the will in this mangled state, he proceeded to raise the issue *devisavit vel non*, which, if our Latin is not at fault, means did he (the testator) devise it or didn't he?

The issue having been decided against the heir, we are not displeased to note that he was mulcted in costs, though for no logical reason that we can perceive. The Vice-Chancellor said he considered the misconduct of the heir in attempting to destroy the will was such that, although it had not increased the costs, he thought that the costs of the issue must be paid by him; and he should so order. But if you ask what the moral of the case is, it had nothing to do with costs. The moral is, that if one has short-tempered relations, it is best to follow the example of Mr. Middleton, Senior, and write testamentary documents on one side of the paper only (not that any of my clients do).

About the same time another testator, Mr. Joseph Russell, set the court the nice problem(4) of discovering the true nature of the doctrines of Socialism founded by Robert Owen. Some of the observations of the Vice-Chancellor read strangely in these days:—

> "I am not quite satisfied on the question which has been raised of the nature of the doctrines of Socialism. What is said on that subject is this, that the leading principle of the society or sect [*sic*] is to establish a new system, called the rational system of society, derived solely from nature and experience, and ultimately to terminate all existing religions [*sic*], governments [*sic*] laws and institutions. Now those are stated to be the doctrines of Socialism founded by Robert Owen . . . Whether there be any doctrines of Socialism other than the doctrines of Socialism founded by Robert Owen, and what such doctrines of Socialism are—I do not know. At all events, there is sufficient case for enquiry on the point . . ."

And so, after directing the master to take accounts, etc., as therein specified, the Vice-Chancellor comfortably concludes:—

> "And he will also inquire what are the doctrines of Socialism referred to by the testator."

The master's report does not appear, and we must be content with Sir Frederick Pollock's laconic comment that "at all events we may collect that in this country the court does not presume all and every doctrine called Socialism to be illegal."

What else was going on? Well, William Hill was being prosecuted for manslaughter,(5) and the evidence of a certain witness Donelly having been admitted at the trial, which took place at the Central Criminal Court, there was a case stated upon the admissibility of his evidence. The short point was whether, and in what circumstances, the evidence of a lunatic is admissible, and although this may draw us into a few comments on the law, we will undertake to make them as brief and painless as possible. The medical evidence in the case is of very great interest, and at least to the layman in such matters suggests a more advanced knowledge of mental

(1) *Cole* v. *Muddle*, 10 Hare 186-191.
(2) *Brien* v. *Bennet*, 8 Car & P. 724-725.
(3) *Middleton* v. *Middleton*, 5 De G. & Sm. 656.
(4) *Russell* v. *Jackson*, 10 Hare 204-216.
(5) *R.* v. *Hill*, 20 L.J.M.C. 222.

illness and treatment than one could have believed possible; but that is by the way, and to bring the evidence in here would take up too much space, so we must reluctantly skip it.

After the medical evidence, the witness Donelly was called, and before being sworn was examined by the prisoner's counsel. He said (condensing it a good deal) :—

> "I am fully aware I have a spirit, and 20,000 of them; they are not all mine. I must enquire . . . I know which are mine—those ascend from my stomach and my head, and also those in my ears—I don't know how many there are; the flesh creates spirits by the palpitation of the nerves and the rheumatics . . . They speak to me incessantly, particularly at night . . . They are round me, speaking to me now . . . I believe purgatory. I know what it is to take an oath . . . My ability evades me while I am speaking, for the spirit ascends to my head; when I swear I appeal to the Almighty; it is perjury, the breaking of a lawful oath, or taking an unlawful one. He that does it will go to hell for all eternity."

He was then sworn, and "gave a perfectly connected and rational account of a transaction which he reported himself to have witnessed." There was a little trouble over a date :—

> *Donelly:* These creatures insist upon it, it was Tuesday night, and I think it was Monday.
>
> *Q.:* Is what you have told us what the spirits told you, or what you recollect without spirits?
>
> *Donelly:* No, the spirits assist me in speaking of the date. I thought it was Monday, and they told me it was Christmas Eve, Tuesday, but I was an eye witness, an ocular witness . . .

Talfourd, J., seems to have pitched on the weak point in the argument of defending counsel, and with his comments and the concluding observation of Lord Campbell we may leave the case :—

> *Talfourd, J.:* If the prisoner's counsel could maintain the proposition which he has laid down, that any human being who labours under a delusion of the mind is incompetent as a witness, there would be most wide-spreading incompetency. Martin Luther, it is said, believed that he had a personal conflict with the devil. The celebrated Dr. Samuel Johnson was convinced that he had heard his mother calling to him in a supernatural manner. Some persons might say that both of these laboured under delusion of mind in these particulars.
>
> *Lord Campbell, C.J.:* The rule contended for would have excluded the evidence of Socrates, for he believed that he had a spirit always prompting him.

If Donelly was troubled with delusions, Miss Bostock of Rudyard Vale would have been glad of them; for what troubled her was reality.(6) Acting under statutory powers, a certain company known as the Company of Proprietors of the Navigation from the Trent to the Mersey (which in this acrostic age would doubtless pass by some such name as COPONOTOM) compulsorily acquired some 180 acres of land in Rudyard Vale, whereof 104 acres came from Miss Bostock's ancestors and predecessors in title. On this land the company formed a reservoir, called Rudyard Lake or Reservoir. In the events that happened (1) Miss Bostock became possessed of the neighbouring mansion house, park and estate, with an exclusive right of fishing in the 104 acres (part of the lake) and of taking game—presumably wildfowl—within the same limits; and (2) the reservoir and all other property of the Navigation Company (COPONOTOM) became vested by the Act 9 and 10 Vict. c. lxxxv in the North Staffordshire Railway Company.

So much for the title and situation of the parties. One can well see that Miss Bostock, living in an age unaccustomed to the compulsory acquisition of private property for the public weal, had no cause to dote on the railway company, and there perhaps the matter might have rested, but for the company's mania for increasing its passenger traffic. With this object in view the company, by newspapers and handbills, advertised the celebration of a "Grand Fête or Regatta" on Rudyard Lake, for Easter Monday, 21st April, 1851, which was to start at one o'clock p.m. "with a grand salute from a park of artillery, under the direction of Bombardier King, of the Royal Artillery, Manchester." There were to be aquatic sports, under the management of the Manchester and Salford Regatta Club; a skiff race was advertised, and it was announced that "a beautiful iron steam-boat" would ply for hire on the lake during the day. The beauty of the scenery was enlarged on and numerous minor amusements, including the performance of a brass band, were advertised as intended for the occasion. Special cheap trains were announced . . . but we cannot bear it. The fête took place, despite remonstrances from Miss Bostock's solicitors. Ten thousand people attended it, the salute was fired from the park of artillery and five races were contested by upwards of twenty boats. Whether this means upwards of twenty per race or four boats to each race is not entirely clear, but whatever it was it was enough. The iron steam-boat duly plied.

Worse and worse, and despite further remonstrances, the railway company advertised another "Grand Regatta" for Whit Monday. (There seems to have been no end to the populous hilarity of 1851, which of course was also the year of the Great Exhibition.) The prospect of Whit Monday was too much. The Eastertide privacy and retirement of Miss Bostock had been interfered with; and to quote from the report (which, to be honest, we have been doing most of the time) "she, her relations and friends were grossly insulted; her grounds were trespassed upon, her plantations and fences were damaged, some of the company fished in the lake"—though we may doubt if under such conditions they caught much—"and her right of fishery generally was injured."

After considering all this, the Vice-Chancellor was moved to cite Lord Eldon, whose words perhaps have even more meaning for us now that another century has slipped by :—

> "When I look upon these Acts of Parliament, I regard them all in the light of contracts made by the Legislature on behalf of every person interested in anything to be done under them; and I have no hesitation in asserting that unless that principle is applied in construing statutes of this description, they become instruments of greater oppression than anything in the whole system of administration under our Constitution."

Well, Lord Eldon was a very great lawyer. And I must not forget to mention that Miss Bostock won her case.

"ESCROW."

(6) *Bostock* v. *North Staffordshire Railway Company*, 5 De G. & Sm. 584.

Mr. JOHN ALEXANDER CHURCHILL, clerk to Ripon and Pateley Bridge Rural Council since 1951, has been appointed clerk and solicitor to Cuckfield Rural Council.

Mr. IAN ARNOLD CLEGG, assistant solicitor to Barnsley Corporation since 1951, has been appointed to a similar post at Wolverhampton.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

STATUTE: CONSTRUCTION: TITLE TO LAND: OCCUPANCY RIGHTS

Chief J. M. Kodilinye and Another *v.* P. A. Anatogu and Another

Viscount Simonds, Lord Oaksey, Lord Tucker, Lord Somervell of Harrow and Mr. L. M. D. de Silva

14th February, 1955

Appeal from the West African Court of Appeal.

In 1882, confirmed by an instrument in 1884, certain land, including that now in dispute known as Ugborimili, situate at Onitsha, Nigeria, was granted by one Orikagbue, a native chief, to the National African Co., Ltd., which company was subsequently merged in the Royal Niger Co., who succeeded to their title to the suit land. The grant expressly reserved certain farming, fishing and occupancy rights. In 1916 the Niger Lands Transfer Ordinance was passed, vesting in the Governor in trust for His Majesty as from 1st January, 1900, certain specified lands belonging to the Niger Co., including the suit land. By Ordinance No. 22 of 1945 the Ordinance of 1916 was amended, and the Governor was thereby empowered to abandon all the right, title or interest vested in him by the Ordinance of 1916 in the trust lands, or any part thereof. On 11th December, 1948, the Governor made an order abandoning as from 1st January, 1949, all right, title or interest in the suit land. Section 14 of the Ordinance of 1916, as amended by Ordinances Nos. 22 and 61 of 1945 (now s. 15 of c. 149 of the Laws of Nigeria, 1948 Rev.) provided that: "Where the Governor abandons all the right, title or interest vested in him by virtue of this Ordinance in any vested trust lands or part thereof . . . then such abandonment shall have effect as if such vested trust lands or part thereof had never been included in the instrument . . . by which the same were originally transferred to the company." The respondents, in a representative action on behalf of the Onitsha tribe or family, alleging that the native chief in 1882 had transferred the suit land to the company on behalf of the Onitshas, and that pursuant to the abandonment order of the Governor it reverted to them on 1st January, 1949, claimed a declaration of title to the land and an injunction to restrain the appellants, the Obosi tribe or family, a number of whom had, between 1882 and 1945, entered on the suit land and built houses thereon (which had given rise to numerous legal proceedings as to their rights), from "interfering with or disturbing the plaintiffs' ownership and possession of the said land." The trial judge granted the respondents the declaration and injunction asked for, and his decision was affirmed by the West African Court of Appeal.

LORD TUCKER, giving the judgment, said that there were no grounds for interfering with the concurrent findings of fact of the courts below that the respondents were the lawful owners to whom the title in the land reverted on the abandonment by the Crown and were entitled to the declaration. The only issue in the action being, however, the ownership or radical title to the land, nothing could or should have been decided which would in any way affect the usufructuary rights, if any, of individuals or of families or tribes to the land in dispute or any portions thereof, or as to whether any such rights were or were not conditional upon payment of rent or tribute. All such matters could only be decided in proceedings in which such issues were properly raised. Accordingly, the injunction granted would be varied by omitting the words "and possession." On its proper construction, s. 14 of the Niger Lands Transfer Ordinance, 1916, as subsequently amended, dealt only with the title to ownership of the land and was not to be construed as compelling the court to disregard all events which had happened in the period between 1882 and 1949 in so far as they might affect any rights of use and occupation in respect of such land as might have been acquired or have accrued by acquiescence or otherwise during those years. It was desirable, whatever the rules of the Supreme Court of Nigeria might permit, that a successful party should obtain a formal order embodying the precise language of the relief granted to him by the judge in cases in which a declaration of title and/or an injunction had been granted. Save for the omission of the words "and possession" from the injunction, the judgment of the trial judge would stand. The appellants must bear their own costs of this appeal and pay to the respondents one-half of their costs.

APPEARANCES: *Sir Hartley Shawcross*, Q.C., *Dingle Foot*, Q.C., and *R. K. Handoo* (*Watkins, Pulleyn & Ellison*); *S. Cope Morgan*, Q.C., and *F. R. McQuown* (*Rexworthy, Bonser and Wadkin*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 231**

HOUSE OF LORDS

STAMP DUTY ON CONVEYANCES OF PROPERTY ON TRUST: RELIGIOUS, SOCIAL AND PHYSICAL WELL-BEING

Inland Revenue Commissioners *v.* Baddeley

Viscount Simonds, Lord Porter, Lord Reid, Lord Tucker and Lord Somervell of Harrow

17th February, 1955

Appeal from the Court of Appeal ([1953] Ch. 504; 97 SOL. J. 436.)

By the first of two conveyances of the same date, land, on which were a mission church, lecture room and store, was transferred to trustees, and by the second, four other pieces of land laid out as playing fields were transferred to them, and it was directed that a specified sum be held as though it were capital money arising from the sale of those pieces of land. The first conveyance provided: "The trustees should permit the said property to be appropriated and used by the leaders for the time being of the Stratford Newtown Methodist Mission for the promotion of the religious social and physical well-being of persons resident in the County Boroughs of West Ham and Leyton . . . by the provision of facilities for religious services and instruction and for the social and physical training and recreation of such aforementioned persons who for the time being are in the opinion of such leaders members or likely to become members of the Methodist Church and of insufficient means otherwise to enjoy the advantages provided by these presents and by the provision of facilities for religious social and physical training and recreation and by promoting and encouraging all forms of such activities as are calculated to contribute to the health and well-being of such persons. . . ." The second conveyance directed the trustees to permit the property thereby conveyed to be used ". . . for the promotion of the moral social and physical well-being of persons resident in the County Boroughs of West Ham and Leyton . . . who for the time being are in the opinion of such leaders members or likely to become members of the Methodist Church and of insufficient means otherwise to enjoy the advantages provided by these presents by the provision of facilities for moral social and physical training and recreation and by promoting and encouraging all forms of such activities as are calculated to contribute to the health and well-being of such persons. . . ." In relation to the amount of stamp duty payable, the question arose whether the conveyances were made to "a body of persons established for charitable purposes only or to the trustees of a trust as established" within s. 54 (1) of the Finance Act, 1947. The Court of Appeal, reversing a decision of Harman, J., held that they were so made. The Inland Revenue Commissioners appealed to the House of Lords.

VISCOUNT SIMONDS said that the appeal raised the question whether certain trusts were charitable in the sense which the law accorded to that word. To determine whether the privileges accorded to charity in the legal sense were to be granted or refused in a particular case was often a matter of great nicety and the House should discourage a further excess of refinement. In the case of the first deed, the phraseology left it in doubt whether the beneficiaries were all the residents in a certain area or only such as satisfied the conditions of being members or potential members of the Methodist Church and of limited means. It was not necessary to determine this question, for, whatever view might be taken of it, the case was governed by *Williams' Trustees* v. *Inland Revenue Commissioners* [1947] A.C. 447. The respondents contended that these were valid charitable trusts as coming within the first heading of Lord Macnaghten's classification in *Income Tax Commissioners* v. *Pemsel* [1891]

A.C. 531, 583, viz., that they were for the relief of poverty. This should be rejected. Relief connoted need of some sort for the means to provide some necessity or quasi-necessity and not merely an amusement, however healthy. The Attorney-General urged that the validity of the trust could be maintained on the ground that, regarded as a whole, it was an educational charity. But, regarded as a whole, the sum of the activities permissible under the deed could only be regarded as educational in the same loose sense in which all experience was educative. If they were examined one by one, it would be impossible to regard many of them as educational. If, then, this trust was charitable it could only be because it fell within the fourth class of Lord Macnaghten's classification; it must be a trust of general public utility within the spirit and intendment of the preamble to the statute 43 Eliz. I, c. 4. Nothing was gained by discussing whether the trust should be regarded as prescribing three separate and distinct objects: (*a*) the promotion of religious well-being; (*b*) the promotion of social well-being, and (*c*) the promotion of physical well-being, or as having as its goal a state of well-being with three several aspects, religious, social and physical. It would not be possible to use language more comprehensive and more vague. The court must ask whether the whole range of prescribed facilities or activities was such as to permit uses which were not charitable; if it was, it was not such a trust as the court could execute and it must fail. In the light of several decisions of the House of Lords in which comparable general words were held not to create a valid charitable trust, it would not be justifiable to take a different view in the present case (see *Farley* v. *Westminster Bank, Ltd.* [1939] A.C. 430; *Dunne* v. *Byrne* [1912] A.C. 407; *Williams' Trustees* v. *Inland Revenue Commissioners* (*supra*)). The second trust must also fail by reason of its vagueness and generality. It did not, however, follow that, because a trust in such vague and general terms could not be supported, a gift of land for a recreation ground must also fail. A gift of land for use as a recreation ground by the community at large or by the inhabitants of a particular geographical area might well be supported as a valid charity. But his lordship would reserve his opinion in a case in which the beneficiaries were a class determined by adherence to a particular religion or employment in a particular industry or by particular employers. The further question had been argued whether the trusts now under review would have to be held to be charitable if the only question in issue were the sufficiency of the public element within the fourth class of the classification in *Pemsel's* case (*supra*). A trust could not qualify as a charity within that class if the beneficiaries were persons not only confined to a particular area but selected from it by reference to a particular creed. On this ground also his lordship would have decided against the respondents, even if he had been otherwise in their favour. The appeal must be allowed.

LORD PORTER, LORD TUCKER and LORD SOMERVELL OF HARROW delivered opinions in favour of allowing the appeal.

LORD REID dissented.

APPEARANCES: *Cross*, Q.C., *J. H. Stamp* and *E. Blanshard Stamp* (*Solicitor of Inland Revenue*); *S. Pascoe Hayward*, Q.C., and *W. F. Waite* (*Kenneth Brown, Baker, Baker*); *Sir Reginald Manningham-Buller*, Q.C., A.-G., and *Denys Buckley* (*Treasury Solicitor*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 552**

NEGLIGENCE: DRIVER KILLED IN AVOIDING CHILD STRAYED FROM SCHOOL: LIABILITY OF EDUCATION AUTHORITY

Carmarthenshire County Council *v.* Lewis

Lord Oaksey, Lord Goddard, Lord Reid, Lord Tucker and Lord Keith of Avonholm. 17th February, 1955

Appeal from the Court of Appeal ([1953] 1 W.L.R. 1439; 97 SOL. J. 831).

A four-year-old boy, attending a nursery school under the management of the appellant council as education authority, strayed from the premises on to a public highway, and the respondent's husband, who was driving a lorry, struck a telegraph post in avoiding him and was killed. The plaintiff sued the council for damages, alleging that the death was caused by their negligence or that of the school-mistress who had left the child temporarily unattended. Devlin, J., found for the plaintiff, holding that the school-mistress had been negligent. The Court of Appeal affirmed his decision. The council appealed.

LORD OAKSEY delivered a dissenting opinion in favour of allowing the appeal on the ground that in the courts below the case was argued and decided entirely on the question of the alleged negligence of the teacher. She was not negligent and accordingly the appeal should succeed.

LORD GODDARD said that an occupier was under no duty to fence his fields, yards or other premises so as to prevent his cattle or other domestic animals from escaping onto the highway. Was he to be held liable for an infant who, from the standpoint of reasoning powers, was much the same as a domestic animal? The rule arose because most roads originated in unenclosed country before fencing became usual. Having regard to its origin it would be unwarrantable to extend it to the facts of the present case. The council maintained a nursery and infant school in premises adjoining a highway in a town and were under a duty to take care that the children neither themselves became involved in nor caused a traffic accident. At the trial the chief matter relied on as establishing negligence was that the child and one other were left unattended by the teacher in charge for a short time during which they got out of the grounds. The facts did not justify an inference of negligence on her part. But that did not conclude the matter as far as the council were concerned. The gates must have been open or very easy for a small child to open. If it was possible for children of such an age, when a teacher's back was turned for a moment, to get into a busy street this indicated some lack of care or of precautions which might reasonably be required. No satisfactory explanation was given for the child being found in the street at a time when he was in the council's care. The appeal should be dismissed.

The other noble and learned lords delivered opinions in favour of dismissing the appeal.

APPEARANCES: *Lloyd-Jones*, Q.C., and *Norman Richards* (*A. D. Vandamm & Co.*, for *Le Brasseur, Davis & Son*, Newport, Mon.); *H. Edmund Davies*, Q.C., and *D. Geoffrey Jennings* (*Davies, Arnold & Cooper*, for *T. Llewellyn Jones*, Neath).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 517**

COURT OF APPEAL

HUSBAND AND WIFE: PERSISTENT CRUELTY: SODOMY WITH WIFE: CORROBORATION

Lawson (W.) *v.* Lawson (E. B.)

Lord Goddard, C.J., Hodson, L.J., and Vaisey, J.

28th October, 1954

Appeal from Divisional Court (Lord Merriman, P., and Barnard, J.) dismissing an appeal by the respondent husband from a decision by justices under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, whereby they found him guilty of persistent cruelty to his wife. The substantive allegation of cruelty made by the wife was that her husband had insisted on her committing acts of sodomy with him. The justices found that the wife, although submitting to the acts in question, was not a consenting party to them. They directed themselves as to the desirability of, but not of the necessity for, corroboration of the wife's evidence. They accepted the wife's story as true, and were of opinion that it was corroborated in certain respects by other evidence given, and found the husband guilty of persistent cruelty. The husband appealed to the Divisional Court, who affirmed the decision of the justices. The Divisional Court was of opinion that the justices, having correctly directed themselves as to the desirability of, but not the legal necessity for, corroboration, were entitled to accept the wife's evidence, even if the matters relied on did not amount to corroboration. The husband appealed.

LORD GODDARD, C.J., said that there was a difference of opinion between the judges forming the Divisional Court as to whether certain evidence relied on actually constituted corroboration of the wife's evidence, but in his opinion it was not necessary for the Court of Appeal to consider the question of corroboration for the reasons that cases such as the present were not cases in which corroboration was required as a matter of law. It was required as a matter of precaution, and a jury should always be directed, if it was a trial on an indictment, that whether the person concerned was to be regarded as an accomplice or not, it would be undesirable or dangerous to convict on the evidence of that person alone, but that it was open to the jury, if they were satisfied with the evidence, to convict. In substance the warning to be given to a jury was the same whether it related to the

evidence of an accomplice, or to the evidence of a woman in a sexual case such as rape or indecent assault. In the present case the justices found that the wife was not a consenting party, which removed her from the category of an accomplice. Putting that aside for the moment, if the justices came to the conclusion that the acts had been committed on the wife, then, whether she was an accomplice or not, provided that she was not a consenting party in the sense that she voluntarily assented to the doing of the acts, he (Lord Goddard, C.J.) did not see how it could be said that the wife was not assaulted and was not entitled to say that the acts of which she complained were acts, or attempted acts of cruelty, which she must have resisted and, for that reason, the husband could not consummate them. That, surely, would be a case of persistent cruelty. In *Statham* v. *Statham* [1929] P. 131, to which they had been referred, the facts were very different from those of the present case. He could see no reason why they should disturb the decision of the Divisional Court and the appeal, therefore, failed.

HODSON, L.J., delivered an assenting judgment, and VAISEY, J., concurred. Appeal dismissed.

APPEARANCES: *Joseph Jackson* (*Craigen, Hicks & Co.*, for *Patrick Bennett, Maddison & Wainwright*, Newcastle-on-Tyne); *D. R. Ellison* (*Peacock & Goddard*, for *Donald Harvey and Co.*, South Shields).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] [1 W.L.R. 200

SALE OF LAND: BOUNDARY DISPUTE: CONSTRUCTION OF CONVEYANCE: ESTOPPEL: REVOCATION OF RECIPROCAL LICENCES

Hopgood *v.* Brown

Evershed, M.R., Jenkins and Morris, L.JJ.

3rd February, 1955

Appeal from Ilford County Court.

In 1932, two adjoining plots on a building estate at Romford, Essex, were conveyed to *T* by separate conveyances. The description of the parcels was similar in both conveyances and in both there was a reference to a small plan attached to the conveyance for identification of the parcels only. In neither of the conveyances was the position of the dividing boundary indicated precisely. *T* subsequently sold both plots and, in 1951, the southern plot was owned by the defendant, the other being owned by a company of which the defendant was a director. The defendant commenced to build on his plot and, pursuant to an agreement between himself and the company, built in such a way that the wall of his garage formed an apparent boundary between the plots which was continued to the back by a wall and fence. This boundary did not run in a straight line parallel with the other side boundaries from the front of the plot to the rear, but included a wedge-shaped strip lying to the north of such a straight line. In 1952, the northern plot was conveyed to *L*, who resold to the plaintiff. In both conveyances no mention was made of the then existing apparent boundary; the area conveyed was described in exactly the terms used in the relevant conveyance of 1932 and there was a reference to the plan attached to that conveyance. The plaintiff claimed that the area conveyed to him was that conveyed to *T* in 1932, and that that part of the defendant's garage which stood on the wedge-shaped strip now apparently forming part of the southern plot was an encroachment. That part of the claim was dismissed by the county court judge, who held that although the conveyances subsequent to that of 1932 relating to the northern plot, and particularly the conveyance from the company to *L*, were apt to convey and did convey the whole area conveyed in 1932 to *T*, that is the area including the disputed strip, the company and its successors in title, including the plaintiff, were estopped from asserting that the boundary was at any other position than was shown on the ground by the garage wall and fence. The plea of estoppel was not pleaded by the defendant but was taken by the judge himself at the trial. The plaintiff further claimed that a manhole (and connecting drain) put into his land by the defendant to act as a junction for the collection of the separate flows of water from the two plots to flow thence by a single outflow under the defendant's land to the main drain under the road was a nuisance. On that matter the county court judge found for the plaintiff and awarded him one shilling damages. The plaintiff appealed and the defendant cross-appealed.

EVERSHED, M.R., said that it must be inferred that in 1932 the boundaries were intended to be along straight lines from the front to the rear. By 1952 it was plain that there was an encroachment over that line. His lordship said that he was of opinion that as regards the conveyances of 1952 from the company to *L* and, subsequently, from *L* to the plaintiff there was much force in the view that it was permissible to have regard to the physical facts, not for the purpose of distorting the language used but for the better identification of that which the language described. The language used was a strong indication that the area conveyed in 1952 was the same as that conveyed in 1932, but the language did not compel to that conclusion; it could be said that it was equally apt to describe the area lying north of the apparent boundary in 1952, and it was less compelling than that considered by Morton, J., in *Wallington* v. *Townsend* [1939] 2 All E.R. 225, at p. 236. But as his brethren did not take the same view his lordship said he would not express any conclusion on that matter. On the question of estoppel, his lordship accepted the view of the county court judge. The formulation of the requisites of estoppel in *Willmott* v. *Barber* (1880), 15 Ch. D. 96, at p. 105, was not exhaustive. The governing principle was correctly stated in Spencer Bower on Estoppel (1923), pp. 9, 10. The company as a party to the agreement of 1951 would have been estopped, once the garage had been erected by the defendant, from asserting that the boundary was anywhere other than as agreed and the plaintiff as successor in title to the company was similarly bound (see *Taylor* v. *Needham* (1810), 2 Taunt. 278). It followed that the plot conveyed to the plaintiff did not include the disputed strip. His lordship said that the drainage system conferred on the plaintiff and defendant rights in the nature of reciprocal licences so that the plaintiff could not revoke the defendant's licence to discharge water through his drain to the manhole on the plaintiff's land, whilst he, the plaintiff, was continuing to enjoy the benefit of the outflow from that manhole under the defendant's land.

JENKINS and MORRIS, L.JJ., agreed with the conclusions reached, but as regards the construction of the conveyance of 1952 to the plaintiff they held that the use of the terms of the conveyance of 1932 and the reference to the plan attached to that conveyance showed that in 1952 the same area was conveyed. On the question of estoppel, Jenkins, L.J., referred to the statement of principle in *Cairncross* v. *Lorimer* (1860), 3 L.T. 130, cited with approval in *In re William Porter & Co., Ltd.* [1937] 2 All E.R. 361. Appeal dismissed. Cross-appeal allowed.

APPEARANCES: *Harry Lester* (*Sidney Torrance & Co.*); *A. E. Holdsworth* (*Sachville, Hulkes & Archdale*, Hornchurch, Essex).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 213

SHIPPING: CHARTERPARTY: MEANING OF "WEATHER-WORKING DAYS"

Alvion Steamship Corporation Panama *v.* Galban Lobo Trading Co. S.A. of Havana

Lord Goddard, C.J., Singleton and Romer, L.JJ.

3rd February, 1955

Appeal from McNair, J. ([1954] 3 W.L.R. 618; 98 SOL. J. 770).

A charterparty made between shipowners (claimants) and charterers (respondents) in a form common in the Cuban sugar trade provided that "lay days at the average rate of 5,000 bags . . . provided that vessel can receive at these rates per weather-working day . . . shall be allowed to the said charterers. Time lost or saved is to be calculated . . . in accordance with the custom of [each loading] port." A dispute which arose between the parties on the question of demurrage was referred to an umpire, who found that by the custom of the relevant ports the ordinary daily working hours were eight hours and four hours on Saturdays; that certain lay time should be allowed to the charterers for rain; that on the true construction of the charterparty "weather-working day" meant the working hours in accordance with the custom of the port, and he made an award accordingly. His award was affirmed by McNair, J. The shipowners appealed.

LORD GODDARD, C.J., said that the whole question depended on the construction of the expression "weather-working day"; the umpire and McNair, J., had agreed that "working day" meant a working day according to the hours customarily worked at the port. A day meant twenty-four hours, but no man would

call his " working day " twenty-four hours; it meant the part of a day in which work was carried on, so to determine a working day one must ascertain the customary hours of work at a particular place or in a particular trade. When qualified by " weather," it meant that from the working day was to be deducted time during which loading was suspended by reason of weather conditions. The court had been asked to express an opinion on the judgment of Lord Russell of Killowen, C.J., in *Branckelow Steamship Co.* v. *Lamport & Holt* [1897] 1 Q.B. 570; 2 Com. Cas. 893, where he rejected the contention that any particular day on which a substantial amount of work was done could be reckoned by the ship as a weather-working day, as unreasonable and inequitable; that appeared to be right, but he then proceeded to lay down a kind of rule of thumb method of application which could not be supported. The award had been correct, and the appeal should be dismissed.

SINGLETON and ROMER, L.JJ., agreed. Appeal dismissed. Leave to appeal refused.

APPEARANCES: *E. W. Roskill*, Q.C., and *R. A. MacCrindle* (*Stokes & Mitcalfe*); *A. A. Mocatta*, Q.C., and *P. Bucknill* (*Stocken, May, Sykes & Dearman*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 543**

RENT RESTRICTION: CONDITIONAL ORDER FOR POSSESSION: POWER TO GRANT EXTENSION

Haymills Houses, Ltd. *v.* Blake

Eversheed, M.R., Jenkins and Morris, L.JJ.

8th February, 1955

Appeal from Brentford County Court.

Under a tenancy agreement of 1948, which contained a proviso for forfeiture for non-payment of rent, the defendant was tenant of premises within the Rent Acts. The landlords, on 28th August, 1954, issued a plaint claiming possession on the ground of non-payment of rent, arrears of rent amounting to £28 8s. 7d. and costs. The plaint was subsequently amended to include a further claim for arrears of rent. The case was heard on 29th September, 1954, at which date the landlords had not been paid in full, and an order was then made for possession on or before 27th October, 1954, being four weeks from the date of the order, unless the rent in arrears and costs were paid before that date. The tenant having failed to comply with that order, the landlords applied for a warrant of possession. The tenant subsequently paid all moneys due under the order of 29th September and applied for the suspension of the order for possession. On 29th November the county court judge made the following order: " It is ordered that the time of the order of 29th September, 1954, be extended for a further twenty-eight days. Debt and costs have been paid; order therefore of 29th September, 1954, be extinguished. Possession warrant revoked." The landlords contended, on appeal, that, having regard to s. 4 (2) of the Rent and Mortgage Interest Restrictions Act, 1923, the county court judge had no jurisdiction to discharge the order for possession of 29th September, 1954, after it had become absolute.

EVERSHED, M.R., said that the tenant not having complied with the order for payment of arrears of rent within four weeks of the first order, his rights under s. 180 (1) (*b*) of the County Courts Act, 1934, had ceased and the landlord's right of forfeiture for non-payment of rent was effectively exercised and the tenant's rights under his tenancy had determined and his rights had become those of a statutory tenant only. Both the orders made against the tenant were conditional ones which, as Somervell, L.J., said in *American Economic Laundry, Ltd.* v. *Little* [1951] 1 K.B. 400, the court could discharge, if it thought fit, if the conditions had been complied with. The county court judge had had jurisdiction to discharge the first order on compliance with the conditions attached to the second, but his lordship criticised the form of that order and indicated the form which should in future be followed to comply with the powers set out in s. 4 (2) of the Act of 1923. After referring to *Mills* v. *Allen* [1953] 2 Q.B. 341, his lordship said that it might well be that, if an absolute order for possession was made, then, when it was not yet executed, the court could, under s. 4 (2), make an order postponing the date of possession on conditions, and, if the conditions were performed, the final words of the subsection would give power to discharge the original order, even though absolute in form. His lordship added, however, that he was not saying anything which would conflict with Somervell, L.J.'s expression of opinion in *American Economic Laundry, Ltd.* v. *Little, supra*, at p. 406, that an absolute order, as such, would not be liable to be discharged under the powers of the final terms of the subsection.

JENKINS and MORRIS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *R. O. C. Stable* (*S. A. Redfern, Barron & Morton*); *Alan C. H. de Piro* (*E. Mackie & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law **[1 W.L.R. 237**

CHANCERY DIVISION

WILL: PROTECTIVE TRUST: ASSIGNMENT BY BENEFICIARY OF FUTURE DIVIDEND: DIVIDEND NEVER DECLARED

***In re* Longman; Westminster Bank, Ltd. *v.* Hatton**

Danckwerts, J. 4th February, 1955

Originating summons.

A testatrix appointed a bank to be the executor and trustee of her will and devised and bequeathed her residuary estate on trust to pay the income to her son and, on his attaining the age of fifty-five years, on trust as to the income and capital for him absolutely. These provisions were subject to a forfeiture clause if he should commit, permit or suffer any act whereby any part of the income or capital of the residuary estate became vested in or payable to any other person. The testatrix died in 1949, and in 1953 the son gave letters of authority to firms of solicitors acting for sundry creditors, authorising and requesting the bank to pay to the respective solicitors the sums of money mentioned in the letters " from the dividend due to me in July next from [a certain company]." The dividend was, however, passed and never declared. The bank took out a summons to determine whether the son had incurred a forfeiture of his interest under the trusts of the will.

DANCKWERTS, J., said that as the dividend in question had been passed, there was nothing on which the authorities given could or did operate, so that they were completely nugatory; in the events which had happened the forfeiture clause did not apply. The cases of *In re Baker* [1904] 1 Ch. 157; *In re Mair* [1909] 2 Ch. 280 and *In re Forder* [1927] 2 Ch. 291 were not in point. No forfeiture had been incurred. Declaration accordingly.

APPEARANCES: *H. Hillaby* (*Peacock & Goddard*, for *Buchanan and Llewellyn*, Bournemouth); *M. J. Fox* (*Official Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 197**

QUEEN'S BENCH DIVISION

NEGLIGENCE: INVITEE OR LICENSEE: SLIPPERY FLOOR IN HOSPITAL: INJURY TO VISITOR

Slade *v.* Battersea and Putney Hospital Management Committee

Finnemore, J. 3rd February, 1955

Action.

A wife, with the permission of the hospital authorities, visited her husband, a patient dangerously ill. At the time cleaners were in the ward but there was no indication that floor polishing was going on. In fact, polish had been applied to part of the floor, but had not been rubbed off; and when leaving the ward the wife slipped and fell on a part of the floor which was in this unfinished state. She brought an action for damages for personal injuries alleging negligence by the hospital for causing or permitting the floor to be slippery and in failing to warn her of its condition.

FINNEMORE, J., said that he was satisfied that when polish is spread on a floor it is far more slippery than it is after one has polished it. No warning was given to the plaintiff as there should have been. There was an unusual danger because she did not know the polish was there, and it was a danger well known to the defendants. Therefore it would follow, if she was an invitee, that she would be entitled to recover. A person who went to a State hospital was not a person going to a charitable voluntary hospital as in the old days; he was a person going to a hospital maintained by the State, towards which he himself paid his contributions through National Health Insurance and in other ways; and he might even on the narrower interpretation of " invitee " be brought within the definition. In the present case a visit by a wife at the invitation of a hospital to her

dangerously ill husband in the hospital was a matter of material interest both to her and to the hospital. If on the other hand that were wrong and the true position was that she was there only by leave and licence as a licensee, she would still be entitled to recover because, on the evidence, this was a concealed danger. In any event, it was immaterial whether the plaintiff was an invitee or a licensee as the defendants had been negligent in failing to warn her of an extraneous danger introduced into the ward after she had entered it. It was not a case of contributory negligence and therefore she was entitled to recover from the defendants. Judgment for the plaintiff.

APPEARANCES: *Felix Denny* (*R. I. Lewis & Co.*); *E. Daly Lewis* (*Sharpe, Pritchard & Co.*, for *J. S. Tapsfield*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 207**

FATAL ACCIDENTS ACTS: DAMAGES: HUSBAND'S CLAIM FOR LOSS OF WIFE AS DANCING PARTNER

Burgess *v.* Florence Nightingale Hospital for Gentlewomen and Another

Devlin, J. 9th February, 1955

Action.

The plaintiff and his wife were professional dancing partners, their income being derived from demonstration fees and prize money won in competitions. Their joint fees were paid to the husband in cash, which was put into a drawer and either of them took from the drawer whatever money was necessary for any particular purpose. In January, 1953, the plaintiff's wife went into hospital for a minor operation and died as a result of the admitted negligence of the surgeon in administering a local anaesthetic. The husband claimed damages under the Fatal Accidents Act, 1846, for, *inter alia*, the loss of his wife as a dancing partner and for the loss of her contribution to their joint living expenses.

DEVLIN, J., said that the benefit, to qualify under the Act, must be a benefit which arises from the relationship between the parties. Here the wife's services were fully paid for—she took her full half-share of the joint earnings. It was not suggested that that was an arrangement that was particularly beneficial to the husband or that it was an arrangement which depended in any way upon the relationship of husband and wife, or that a lady dancing partner would have asked more but for the fact that she was the wife of the other partner. It was, in effect, the market rate, so far as there was any evidence, and therefore she was not rendering any services to the husband which he got either free or at anything less than the market rate. The husband and wife's relationship was superimposed on the partnership. There were, therefore, no services that were rendered by the wife to the husband, and there was no benefit arising in the dancing partnership that could properly be attributed to the relationship of the husband and wife. As to the loss by the husband of his wife's contribution to their joint living expenses, when a husband and wife, either with separate incomes or with a joint income to which they were both beneficially entitled, were living together and sharing their expenses, and in consequence of that fact their joint living expenses were less than twice the expenses of each one living separately, then each, by the fact of the sharing, was conferring a benefit on the other, and mutual benefits clearly arose from the relationship by virtue of which they were living together, namely, the relationship of husband and wife. Accordingly the wife's contribution was a benefit recoverable by the husband. Judgment for the plaintiff for £2,650.

APPEARANCES: *Anthony A. Marlowe*, Q.C., and *Andrew Phelan* (*Alwyn Williams*); *A. P. Marshall*, Q.C., and *Michael Hoare* (*Le Brasseur & Oakley*).

[Reported by J. D. PENNINGTON ,Esq., Barrister-at-Law] **[2 W.L.R. 533**

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

National Service Bill [H.C.] [23rd February.
Transport (Borrowing Powers) Bill [H.C.] [24th February.

Read Second Time :—

Colonial Development and Welfare Bill [H.C.] [24th February.
County Courts Bill [H.L.] [22nd February.

In Committee :—

Cocos Islands Bill [H.C.] [24th February.
Food and Drugs (Scotland) Bill [H.L.] [24th February.
Road Traffic Bill [H.L.] [22nd February.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Town Polls Bill [H.C.] [23rd February.
To amend the law relating to town polls and town meetings.

Read Second Time :—

British Transport Commission Bill [H.C.] [22nd February.
Children and Young Persons (Harmful Publications) Bill [H.C.] [22nd February.
Rural Water Supplies and Sewerage Bill [H.C.] [22nd February.

Read Third Time :—

Trustee Savings Banks (Pensions) Bill [H.C.] [25th February.

B. QUESTIONS

ENDORSEMENT OF CHEQUES

Mr. R. A. BUTLER stated that he had decided to appoint a committee to investigate the question of dispensing with endorsement when a cheque is paid into the payee's own bank. Mr. ALAN A. Mocatta, O.B.E., Q.C., had consented to become chairman. [22nd February.

STAMP DUTY ON FARM TENANCY AGREEMENTS

Mr. H. BROOKE stated that he had no evidence that the rate of stamp duty on tenancy agreements for farms of small annual value had been a serious factor in discouraging farmers from entering into written agreements. [22nd February.

PLANNING INQUIRIES PROCEDURE

Asked whether, in view of the increasing importance and number of planning inquiries, the Minister of Housing and Local Government would make available to appellants the instructions issued by his department to inspectors as to the rules to be observed by them relating to the taking of evidence and the procedure to be followed at such inquiries, Mr. A. J. IRVINE replied that he did not think such a course would be helpful to appellants. [22nd February.

REMANDED JUVENILES, LONDON

Major LLOYD-GEORGE said that he was examining the possibility of arranging for the sitting of a special London juvenile court to prevent juveniles charged with an offence from being held on remand by the police for periods up to seven days without the opportunity of seeing a magistrate.

Such cases were infrequent, and the vast majority of juveniles arrested were, of course, bailed. [24th February.

MAGISTRATES' COURTS (NOTIFICATION TO PRESS)

Major LLOYD-GEORGE said that he had no information to suggest that it was necessary to circularise justices' clerks drawing attention to the desirability of notifying local newspapers of the date, time and place of each ordinary and special court, including juvenile courts. Since the passing of the 1952 Act it had not been necessary for public notice of sittings to be given. [24th February.

PREVENTIVE DETENTION

Major LLOYD-GEORGE said that by 31st December, 1954, 211 men and 10 women had been released from sentences of preventive detention imposed under the Criminal Justice Act, 1948: of these, 97 men and one woman had been reconvicted of further offences by that date. This experience was too limited for any considered assessment of the deterrent effect of the system. [24th February.

STATUTORY INSTRUMENTS

Act of Sederunt (Rules of Court Amendment) 1955. (S.I. 1955 No. 276 (S. 27).)

Act of Sederunt (Valuation Appeal Rules Amendment) 1955. (S.I. 1955 No. 275 (S. 26).)

Coal Industry (Superannuation Scheme) (Winding Up, No. 8) Regulations, 1955. (S.I. 1955 No. 281.) 6d.

County of Essex (Electoral Divisions) Order, 1955. (S.I. 1955 No. 269.) 8d.

County of West Sussex (Electoral Divisions) Order, 1955. (S.I. 1955 No. 278.)

Employment of Young Persons (Glass Containers) Regulations, 1955. (S.I. 1955 No. 274.)

Importation of Potatoes and Vegetables Order, 1955. (S.I. 1955 No. 277.) 6d.

London Traffic (Welwyn Garden City) Regulations, 1955. (S.I. 1955 No. 265.)

National Health Service (General Dental Services) (Scotland) Regulations, 1955. (S.I. 1955 No. 258 (S. 24).) 1s. 5d.

Retention of Cables under Highways (County of Southampton) (No. 1) Order, 1955. (S.I. 1955 No. 264.)

St. James's and Green Parks Regulations, 1955. (S.I. 1955 No. 266.) 5d.

Sea Fisheries (Scotland) Byelaw (No. 52), 1955. (S.I. 1955 No. 271 (S. 25).)

Stopping up of Highways (London) (No. 8) Order, 1955. (S.I. 1955 No. 256.)

Stopping up of Highways (Sunderland) (No. 1) Order, 1955. (S.I. 1955 No. 268.)

Wages Regulation (Licensed Residential Establishment and Licensed Restaurant) (Amendment) Order, 1955. (S.I. 1955 No. 267.) 8d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Place of Payment of Rent

Q. A client of ours owns property subject to the Rent Acts, which is let on a weekly verbal tenancy. A dispute has arisen between our client and the tenant as to the place of payment of the rent. We have advised him that the proper place for payment of the rent is upon the premises, i.e., that he should collect it there. There is no written agreement and the only document involved is a "Chirm's" rent book. Unfortunately our client has been advised by a daily newspaper that the rent is a debt which should be tendered to him by the tenant. The text books give *Haldane* v. *Johnson* (1853), 8 Ex. 689, as the authority on which we have based our advice, but as summarised in the English and Empire Digest the decision does not seem a very clear one. Can you kindly refer us to any recent case in which it has been decided that in such a case the rent should be collected by the landlord, and also confirm that this is the position?

A. We cannot refer to any recent case on the question, which is one that has puzzled the best brains, including those of the B.B.C. A broadcast in that corporation's "This is the Law" series occasioned an article to be found at 88 SOL. J. 82 (4th March, 1944), in which *Haldane* v. *Johnson* and other authorities were critically examined and it was suggested that the mistake had sometimes been made of applying decisions in forfeiture cases to ordinary claims for debt. The view that any reservation of rent implies a covenant to pay, which would underlie the daily newspaper's advice, is, we may mention, supported by Professor Holdsworth's "History of English Law" (see vol. VII, p. 262).

Grant of Lease of Whole Property to One of Two Owners of Parts

Q. Our client, *A*, Ltd., is the owner of part of Blackacre, the remainder being owned by our client *B*, Ltd. *A*, Ltd., and *B*, Ltd., are associated companies but they do not own the property as joint tenants or as tenants in common; each owns a part separately under a separate title. *A* and *B* now wish to grant a lease of the whole of Blackacre (comprising both *A's* and *B's* interests) to *A* at a substantial rent. Is there any objection to this or would the fact that *A* is one of the lessors invalidate the lease in any way? It will be appreciated that if *A* and *B* transfer their interests to a third party, in order to enable the lease to be granted back to *A*, considerable stamp duties would be involved, as the value of Blackacre is considerable, and it is desired to avoid this. The provisions of s. 82 of the Law of Property Act, 1925, would appear to make the proposed transaction quite valid.

A. We agree that the Law of Property Act, 1925, s. 82, would make the covenants by *A* enforceable, if otherwise valid; the section disposed of the law as stated in *Ellis* v. *Kerr* [1910] 1 Ch. 529. But in our opinion the lease would be valid only in so far as estoppel would operate; for neither in the case of the part owned by *A*, nor in the case of the part owned by *B*, could it be said that there was a grant by the owner of an estate of an interest less than he himself possesses in the land; for in neither case would the grantors own the estate; and in the one case the grant would not, even if they did, be of an interest less than what they were said to own. But, as between themselves, we consider that each would be estopped from denying the other's rights, and that knowledge of the want of title would not be material (*Jolly* v. *Arbuthnot* (1859), 4 De G. & J. 224; *Duke* v. *Ashby* (1862), 7 H. & N. 600; *Morton* v. *Woods* (1869), L.R. 4 Q.B. 293). The reciprocality of estoppels is mentioned in Coke-upon-Littleton 352A; and see *Keith* v. *Gancia* [1904] 1 Ch. 774.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Landlord and Tenant Act, 1954—Quarterly Tenancy "Continued"—Whether Notice to Quit Must Expire on Quarter-day

Q. A landlord desires to determine a quarterly tenancy which, before the passing of the above Act, would have been determinable by one quarter's notice expiring on any quarter day. Will it suffice if the landlord gives a notice to quit expiring just over six months from the date of the notice or must the notice expire on a quarter day—say, 24th June, 1955?

A. In our opinion, the notice must expire on a quarter day. There is, we consider, no modification of the habendum of the tenancy "continued" by the Landlord and Tenant Act, 1954, s. 24; s. 25 (2) is concerned with length of notice to terminate, prescribing a maximum and minimum period, rather than with date of termination; and then s. 25 (3), with its "earliest . . ." ensures that, while the notice to terminate may have to be a longer notice than would have been a notice to quit, it cannot be made to expire before a notice to quit, given "on the date," could have been made to expire. We might add that the absence of provision for apportioning rent tends to support the above conclusion.

Rent Tribunal—Determination of Standard Rent—Claim for Refund of Excess Rent to End of Quarter

Q. A rent tribunal has fixed the standard rent of a dwelling-house pursuant to s. 1 (2) of the Landlord and Tenant (Rent Control) Act, 1949. Rent had already been paid by the tenant in advance for the quarter during the currency of which the determination was made, at a higher rate than the rent fixed by the tribunal. The landlord refuses to refund the excess rent for the period from the date of the determination up to the end of the quarter. Is there any authority as to whether the tenant is entitled to a refund for the period in question?

A. In our opinion, there is sufficient authority to show that the tenant is not entitled to the suggested refund. An analogous question arose under the Landlord and Tenant (War Damage)

Act, 1939, provisions for disclaimer in *Hildebrand* v. *Lewis* [1941] 2 K.B. 135 (C.A.) in which the court (somewhat modifying views tentatively expressed in *Turner* v. *Stella Bond, Ltd.* [1941] 1 K.B. 569 (C.A.)) held that forehand rent due before the disclaimer was recoverable, the fundamental consideration being that the Apportionment Act, 1870, did not (as was held in *Ellis* v. *Rowbotham* [1900] 1 Q.B. 740 (C.A.)) apply to such. (Apportionment in such cases was subsequently expressly provided for by the amending Act of 1941.) In our opinion, while the war damage Act operated by deeming the lease disclaimed to have been surrendered, and the Landlord and Tenant (Rent Control) Act, 1949, achieves its purpose by providing that " as from the date of the determination " the rent determined by the tribunal *shall be* the standard rent (s. 1 (2)), the *Ellis* v. *Rowbotham* reasoning applies. A brief report of a county court decision, *McNulty* v. *Curtis*, in which the same conclusion was reached by rather different reasoning, is to be found in the Current Law Year Book, 1950, No. 3488.

NOTES AND NEWS

Honours and Appointments

Mr. EDWIN RIGBY HINCHLIFFE, solicitor, of Brighouse, has accepted an invitation to continue in office as Mayor of Brighouse for a second term.

Mr. REGINALD DOUGLAS WOODS MAXWELL, senior solicitor to Watford Borough Council, has been appointed deputy town clerk of Aylesbury Borough Council.

The following appointments are announced from the Oversea Service Division of the Colonial Office :—

Mr. E. A. L. BANNERMAN, District Magistrate, Gold Coast, to be Senior Magistrate, Gold Coast ; Mr. A. H. BUSBY, Magistrate, Trinidad, to be Senior Magistrate, Trinidad ; Mr. H. E. DEVAUX, District Magistrate, Gold Coast, to be Deputy Land Boundary Settlement Commissioner, Gold Coast ; Mr. I. V. ELYAN, District Magistrate, Gold Coast, to be Senior Magistrate, Gold Coast ; Mr. I. R. GREENE, Resident Magistrate, Zanzibar, to be Senior Resident Magistrate, Zanzibar ; Mr. N. R. T. JOHNSON, Assistant Administrator-General, Northern Rhodesia, to be Administrator-General, Northern Rhodesia ; Mr. D. G. LONGDEN, Administrative Officer, Tanganyika, to be Resident Magistrate, Tanganyika ; Mr. A. H. MCSHINE, Magistrate, Trinidad, to be Senior Magistrate, Trinidad ; Mr. L. A. W. ORR, Solicitor-General, Bahamas, to be Attorney-General, Bahamas ; Mr. N. J. G. RAMSAY, Administrator-General, Northern Rhodesia, to be Resident Magistrate, Northern Rhodesia ; Mr. H. C. SMITH, District Magistrate, Gold Coast, to be Senior Magistrate, Gold Coast ; Mr. F. SOUTHWORTH, Attorney-General, Bahamas, to be Assistant Judge, Nyasaland ; Mr. A. C. SPURLING, Attorney-General, Gambia, to be Attorney-General, Sierra Leone ; Mr. J. S. TEMPLETON, Crown Counsel, Kenya, to be Senior Crown Counsel, Kenya ; Mr. A. M. F. WEBB, Assistant Legal Draftsman, Federation of Malaya, to be Deputy Public Prosecutor, Kenya ; Mr. G. V. C. YOUNG, Crown Counsel, Gold Coast, to be Assistant Attorney-General, Sarawak ; Mr. W. S. COLLIER to be Crown Counsel, Hong Kong ; Mr. N. HENDERSON to be Crown Counsel, Northern Region, Nigeria ; and Mr. D. W. L. YEATS to be Crown Counsel, Northern Rhodesia.

Miscellaneous

DEVELOPMENT PLANS

ISLE OF ELY DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the Isle of Ely. The plan, as approved, will be deposited in the County Hall, March, for inspection by the public.

CUMBERLAND COUNTY COUNCIL DEVELOPMENT PLAN, 1952

Proposals for additions to the above development plan were, on 15th February, 1955, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Borough of Whitehaven. Certified copies of the proposals as submitted have been deposited for public inspection at Town Hall, Whitehaven, and The Courts, Carlisle. The copies of the proposals so deposited together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 9 a.m. and 5 p.m. Mondays to Fridays inclusive and 9 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 11th April, 1955, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Cumberland County Council and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

THE SOLICITORS ACTS, 1932 TO 1941

JOHN GEOFFREY FEARNLEY SCARR, of The Resident Magistrate's Office, P.O. Box 326, Broken Hill, Northern Rhodesia, Solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires in due course to be called to the Bar, an Order was, on 10th February, 1955, made by the Committee that the application of the said John Geoffrey Fearnley Scarr be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

HERBERT GEORGE HOLWELL DUFFUS, of 27 Tucker Avenue, Liguanea, P.O., Jamaica, B.W.I., Solicitor, having in accordance with provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires in due course to be called to the Bar, an Order was, on 10th February, 1955, made by the Committee that the application of the said Herbert George Holwell Duffus be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

A special university lecture in laws on " Foundations of the Authority of International Law and the Problem of Enforcement " will be given by Sir Gerald Fitzmaurice, C.M.G., Legal Adviser to the Foreign Office, at King's College, Strand, W.C.2, at 5 p.m. on Thursday, 17th March, 1955. The chair will be taken by Professor R. H. Graveson, LL.D., S.J.D., Professor of Law in the University of London. The lecture is addressed to students of London University and to others interested in the subject. Admission is free and without a ticket.

OBITUARY

MR. J. ALCOCK

Mr. James Alcock, solicitor, of Liverpool, died on 22nd February, aged 82. He was admitted in 1895.

MR. R. M. MANSER

Mr. Robert Marsack Manser, solicitor, of Bournemouth and Poole, died on 15th February, aged 74. He had been registrar of the local group of county courts and clerk to Poole Harbour Commissioners. He was admitted in 1905. He had played cricket for Hampshire and Dorset and hockey for Dorset.

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